

HOUSE BILL No. 4112

February 7, 1991, Introduced by Reps. Gnodtke, Brackenridge, Ouwinga, Bryant, Dalman, Strand, DeLange, Bobier, Bender, McNutt, Oxender, London, Randall, Robertson and Gilmer and referred to the Committee on Agriculture, Forestry and Minerals.

A bill to regulate organic agricultural products; to establish standards for agricultural products and to require certification of certain persons; to authorize certain fees; to accredit certifying agents; to provide for the powers and duties of certain state agencies and officials and certain persons; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as "the
2 Michigan organic food act".

3 Sec. 2. The legislature finds that:

4 (a) Organic farming is based upon a set of principles that
5 encourage stewardship of the earth, and organic farming is
6 designed to work in harmony with natural systems and cycles, with
7 consideration of wider social and ecological impact.

1 (b) Producers of organically grown agricultural products do
2 all of the following:

3 (i) Seek to provide agricultural products of the highest
4 quality, using practices and materials that do not place human
5 health at risk.

6 (ii) Use renewable resources to the greatest extent possi-
7 ble, within agricultural systems that are locally organized.

8 (iii) Maintain diversity within the farming system and in
9 its surroundings, including the protection of plant and wildlife
10 habitat.

11 (iv) Replenish and maintain long-term soil fertility by pro-
12 viding optimum conditions for soil biological activity and
13 health.

14 (v) Provide livestock, fish, and fowl with conditions that
15 meet both health and behavioral requirements, including particu-
16 lar concern for the ethological needs of the livestock and
17 poultry.

18 (vi) Seek to enhance protection and integrity of the
19 ecosystem.

20 Sec. 3. As used in this act:

21 (a) "Agricultural product" means an agricultural commodity,
22 whether raw or processed, including livestock, fish, or fowl and
23 any commodity derived from livestock, fish, or fowl that is
24 marketed for human or animal consumption.

25 (b) "Administered" means ingested, injected, or otherwise
26 topically or internally introduced to livestock, fish, or fowl.

1 (c) "Applied" means introduced, incorporated within, added
2 to, or placed upon any seed, crop, plant, livestock, fish, fowl,
3 soil, or growing medium, and also means used in, on, or around a
4 facility or area in which agricultural products are kept.

5 (d) "Botanical" means a substance derived solely from a
6 plant or a part of a plant.

7 (e) "Certified" means certified under this act by the certi-
8 fying agent.

9 (f) "Certifying agent" means the department or a person
10 accredited by the director as the certifying agent for the pur-
11 pose of certifying organic farms and processors under this act.

12 (g) "Department" means the department of agriculture.

13 (h) "Director" means the director of the department or his
14 or her designee.

15 (i) "Farm plan" means a written plan of organic management
16 of a farm that is submitted by a producer when he or she applies
17 for certification and which is complied with as a condition of
18 maintaining certification.

19 (j) "Growing medium" means a substance that provides nutri-
20 ents for plants or fungi but is separate from the land surface.

21 (k) "Handler" means a person engaged in the selling, trans-
22 porting, or handling of an organically produced agricultural
23 product.

24 (l) "Materials and practices list" means a list of materials
25 and practices preferred, regulated, or prohibited in the produc-
26 tion of organic agricultural products that is provided for in
27 this act or in rules promulgated under this act.

1 (m) "Naturally derived" means minerals and organic products
2 obtained from natural deposits, plants, or animals that since
3 their extraction, harvest, or slaughter have only been subjected
4 to mechanical and physical treatments, such as grinding, milling,
5 drying, cold, heat, extraction, distillation, or crystallization,
6 with the aim of isolating, purifying, or concentrating a particu-
7 lar ingredient.

8 (n) "Organically produced" means an agricultural product
9 that is labeled, advertised, represented, or otherwise marketed
10 using the term "organically produced", "organically grown",
11 "organic", or any variation of these terms.

12 (o) "Person" means an individual, partnership, association,
13 corporation, or any other legal entity.

14 (p) "Pesticide" means a substance or mixture of substances
15 intended for preventing, destroying, repelling, or mitigating any
16 pest, or a substance or mixture of substances intended for use as
17 a plant regulator, defoliant, or desiccant.

18 (q) "Processed" means cooked, baked, heated, dried, mixed,
19 ground, crushed, pressed, churned, separated, extracted, cut,
20 fermented, eviscerated, preserved, dehydrated, frozen, changed in
21 physical characteristics, or otherwise manufactured, and includes
22 the packaging, canning, jarring, or otherwise enclosing an agri-
23 cultural product in a container. Processed does not mean sorted,
24 cleaned, water-rinsed, rapidly chilled, or any other post harvest
25 mechanical handling of a grain or nut necessary to render the
26 product into a marketable form.

1 (r) "Processor" means a person who processes an organic
2 agricultural product.

3 (s) "Producer" means a person who grows or raises an organic
4 agricultural product.

5 (t) "Rules" means rules promulgated pursuant to the adminis-
6 trative procedures act of 1969, Act No. 306 of the Public Acts of
7 1969, being sections 24.201 to 24.328 of the Michigan Compiled
8 Laws.

9 (u) "Synthetic" means a substance that is manufactured by
10 chemical reaction or chemical synthesis to create a substance
11 that does not occur in nature. The term synthetic does not
12 include substances produced solely by biological degradation,
13 microbiological processes, biological propagation, or physical
14 manipulation through physical or mechanical action, such as
15 crushing, drying, cooking, or extraction, of natural materials.

16 (v) "Xenobiotic" means a material that is produced through
17 synthesis or gene splicing that does not occur naturally.

18 Sec. 4. (1) Organically produced agricultural products
19 shall be all of the following:

20 (a) Produced by systems based on farm management practices
21 that replenish and maintain soil fertility and provide optimum
22 conditions for soil biological activity.

23 (b) Produced or composed of ingredients that are grown or
24 raised without the use of synthetic fertilizers, pesticides, hor-
25 mones, antibiotics, growth stimulants, or arsenicals, or any
26 other substance that is synthetic.

1 (c) Grown, harvested, preserved, processed, stored,
2 transported, and marketed only in accordance with the applicable
3 materials and practices list for at least 3 years prior to
4 harvest.

5 (d) Packaged and transported free of synthetic fungicides,
6 preservatives, fumigants, and pesticides, and other substances
7 that are synthetic, including substances materials and containers
8 that may be absorbed by or adhere to an agricultural product, and
9 shall not be packaged or put in containers that have previously
10 been in contact with a substance that may compromise the organic
11 quality of the product as determined by the director.

12 (e) Produced on land that has not had a synthetic substance
13 applied for at least 3 years prior to the harvest of the agricul-
14 tural product.

15 (f) Meet all applicable local, state, and federal regula-
16 tions governing the safety and quality of agricultural products.

17 (g) Not produced on soil or any growing medium determined by
18 the certifying agent to contain levels of chemical residue that
19 are likely to result in unsafe residue levels in an agricultural
20 product produced on the soil.

21 Sec. 5. (1) Organically produced livestock, fish, and fowl
22 shall be produced in a manner that is consistent with all of the
23 following:

24 (a) Livestock, fish, or fowl shall be provided with a habi-
25 tat that fulfills their physiological and ethological needs.

26 (b) Livestock, fish, or fowl shall be provided with
27 enclosures or waters that contain feeds and pastures that are

1 organic in accordance with this act and the rules promulgated
2 under this act.

3 (c) Organically produced livestock, fish, and fowl shall be
4 fed organically produced feed and pasture at a minimum ration
5 percentage as established by rules promulgated under this act.

6 (2) Organically produced livestock, fish, and fowl shall be
7 produced without any of the following:

8 (a) Drug, medication, hormone or growth regulator, whether
9 or not synthetic, or any other synthetic substance, including a
10 substance administered to stimulate or regulate growth or tender-
11 ness, and any subtherapeutic dose of antibiotic.

12 (b) Feed, supplement, or practice that does not comply with
13 the applicable materials and practices list.

14 (c) Xenobiotic substance applied postmortem to the meat,
15 fish, or fowl, or to its packaging, including preservatives,
16 except as otherwise provided by rule.

17 (3) Notwithstanding subsection (2), the use of a drug or
18 medication for medical treatment of a specific and manifest
19 malady diagnosed and prescribed by a licensed veterinarian for
20 livestock, fish, or fowl is permitted with a withdrawal time
21 prior to slaughter as specified by rules promulgated under this
22 act. In addition, vaccines may be administered for prevention of
23 an endemic disease or as required by law, and vitamin and mineral
24 supplements also may be administered.

25 Sec. 6. (1) Organically produced agricultural products
26 shall be consistent with all of the following:

1 (a) Produced, processed, and marketed without any synthetics
2 including synthetic preservatives, coloring, flavoring,
3 texturizers, and emulsifiers.

4 (b) Produced from ingredients that are organic in accordance
5 with this act and rules promulgated under this act or are allowed
6 by an applicable materials and practices list.

7 (c) Packaged with materials that do not contain fungicides,
8 preservatives, or other chemical additives, and have not been in
9 contact with any substance that could compromise the organic
10 quality of the agricultural product.

11 (2) Handlers and processors of organically produced agricul-
12 tural products shall have appropriate physical facilities,
13 machinery, and management practices to prevent the possibility of
14 mixing organic and nonorganic products.

15 Sec. 7. (1) Except as otherwise provided in subsection (8),
16 before a person engages in the business of producing or process-
17 ing organic agricultural products for sale, he or she shall be
18 certified. An application for certification shall be submitted
19 to the department or the certifying agent as required by the
20 department on an annual basis on forms prescribed by the
21 department. An application shall include a sworn statement that
22 the applicant has and will fully comply with this act and the
23 rules promulgated under this act. Applications to be certified
24 shall be submitted by May 31 of each year.

25 (2) An organic agricultural product producer whose applica-
26 tion for certification is granted shall be assigned a producer
27 identification number. All sales, other than to the ultimate

1 consumer shall include the producer number on the invoice or
2 other document evidencing the sale.

3 (3) Standards for certification shall be as provided in this
4 act and in the rules promulgated under this act. A person who
5 the department determines meets the requirements of this act and
6 rules promulgated under this act shall be certified as a
7 "certified organic farm" or "certified organic processor".

8 Certification may be for an entire farm or processing operation
9 or for a designated part of a farm or processing operation.

10 (4) Each producer seeking certification shall submit a farm
11 plan to the certifying agent for approval. The director shall
12 establish a schedule for frequency of on-site inspection of each
13 farm and processor certified under this section. An inspection
14 may entail survey of required records, examination of crops and
15 fields, and examination of any other information considered nec-
16 essary by the director to fulfill the requirements of this act
17 and rules promulgated under this act.

18 (5) The certifying agent may revoke a certification as pro-
19 vided in subsection (6) if the certifying agent finds that the
20 certified person has done any of the following:

21 (a) Violated the standards for certification set forth in
22 this act and the rules promulgated under this act.

23 (b) Filed an application for certification that is false or
24 misleading.

25 (c) Failed to allow access to records or allow inspection as
26 required under this act.

1 (d) Violated this act or the rules promulgated under this
2 act in any other respect.

3 (6) The department may revoke a person's certification under
4 this act pursuant to the administrative procedures act of 1969,
5 Act No. 306 of the Public Acts of 1969, being sections 24.201 to
6 24.328 of the Michigan Compiled Laws, or the certifying agent may
7 issue an order directing the person to take action to correct the
8 violation.

9 (7) A person denied certification or notified that his or
10 her certification may be revoked shall be offered the opportunity
11 for a hearing pursuant to Act No. 306 of the Public Acts of 1969
12 by the certifying agent. The request for a hearing shall be in
13 writing, addressed to the certifying agent, and be received by
14 the certifying agent no later than 20 days from the date of the
15 notice of the opportunity to apply for a hearing.

16 (8) A person who produces less than \$1,000.00 worth of
17 organic agricultural products for sale on the person's property
18 is exempt from certification under this act but is subject to all
19 other requirements of this act and the rules promulgated under
20 this act. A person who utilizes this exemption shall not label
21 or represent his or her agricultural product as being certified
22 under this act.

23 Sec. 8. (1) The director or a person accredited by the
24 director shall certify farms and processing establishments as
25 organically certified and a person accredited by the director to
26 undertake these functions shall do all of the following:

1 (a) Have sufficient expertise in organic farming or
2 processing, or both, as determined by the director.

3 (b) Comply with the requirements of this act and the rules
4 promulgated under this act.

5 (c) Be able to implement fully the requirements of this
6 act.

7 (d) Maintain all records concerning the activities of an
8 agent under this act for a period of not less than 10 years and
9 permit the director to have access to all of these records at
10 reasonable times and places. If a person that has been accredi-
11 ted as a certifying agent loses accreditation or ceases doing
12 business, all records pertaining to this act shall become the
13 property of the director and shall be transferred to the
14 director.

15 (e) Furnish reasonable security to protect the rights of
16 participants in the program established by this act.

17 (f) Hold the department harmless for any failure on the part
18 of the certifying agent to carry out his or her duties and powers
19 under this act.

20 (g) Fully comply with the terms and conditions of this act
21 and the rules promulgated under this act.

22 (h) Maintain strict confidentiality with respect to the cli-
23 ents of the certifying agent and not disclose to third parties,
24 with the exception of the director, any business related informa-
25 tion concerning clients that was obtained while the agent was
26 implementing this act.

1 (i) Maintain a list of all inspectors employed by the
2 certifying agent and annually furnish the director with a copy of
3 the list. The employees shall have knowledge of organic farming
4 or organic handling and processing sufficient to act in compli-
5 ance with this act and the rules promulgated under this act.

6 (j) Annually provide the department with a list of all cer-
7 tified persons.

8 (5) A certifying agent shall not do any of the following:

9 (a) Carry out an inspection of any operation in which the
10 agent or the employee of the agent has or has had a commercial
11 interest in, including the provision of consultative services by
12 the agent.

13 (b) Accept payment, gifts, or favors of any kind from a
14 person that is inspected that is in excess of the fees for certi-
15 fication prescribed in rules promulgated under this act.

16 (c) Provide advice concerning organic practices and tech-
17 niques for a fee, other than for fees established under this
18 act.

19 (d) Permit a person certified by the agent to deliver or
20 sell any agricultural commodities labeled as organically produced
21 if the commodities do not meet the requirements of this act and
22 the rules promulgated under this act.

23 Sec. 9. (1) A producer of organic agricultural products
24 shall maintain accurate records to document and verify by compre-
25 hensive recording production and handling systems. A person
26 producing, processing, or selling organic agricultural products
27 shall provide the department, upon request, with relevant

1 information from records required by this act. All records
2 required by this act shall be available for audit by the director
3 at the location of the person's business.

4 (2) A producer of organically produced livestock, fish, or
5 fowl shall maintain records of all applicable management prac-
6 tices, inputs or feed, supplements, medicine and dates adminis-
7 tered, and disease that permits the tracing of sources and
8 amounts for at least 5 years. With the exception of fowl, if
9 animals are not individually identified by numbered tags, each
10 animal that is treated with a regulated substance must be clearly
11 identified with a tag specifying the material and date of
12 treatment. Each animal shall be traced from birth to slaughter
13 by the producer.

14 Sec. 10. (1) The director shall promulgate rules establish-
15 ing materials and practices lists that contain an itemization of
16 specific substances and practices in 1 of the 3 following
17 categories:

18 (a) Preferred: to include only naturally-derived
19 materials.

20 (b) Regulated: to include any naturally derived material
21 that is allowed when regulated, synthetic materials that are
22 chemically identical to naturally-derived products, and xenobio-
23 tics, even though the use of the substance is prohibited else-
24 where in this act.

25 (c) Prohibited: to include xenobiotic materials and organ-
26 isms and synthetic or naturally-derived materials as determined
27 necessary by the director.

1 (2) In establishing materials and practices lists, the
2 director shall consider all of the following:

3 (a) The potential for detrimental chemical interactions with
4 other agricultural chemicals used in organic agriculture.

5 (b) The toxicity and mode of action of the material and of
6 its breakdown products or any contaminants, and their persistence
7 and areas of concentration in the environment.

8 (c) The probability of environmental contamination during
9 manufacture, during normal and recommended use, or as a result of
10 misuse.

11 (d) The effects of the material or practice on human
12 health.

13 (e) The physiological impact of the material or practice on
14 crops or livestock.

15 (f) The effects of the material on biological and chemical
16 interactions in the agro-ecosystem, including the physiological
17 effects of the material on soil organisms and consideration of
18 salt index and solubility.

19 (g) The resources used in the manufacture and distribution
20 of a material.

21 (h) The alternatives to using the material or practice.

22 (i) The essential need for the material or practice.

23 (j) The economic impact of the proposed use of the material
24 or practice on persons producing organic products.

25 (k) United States environmental protection agency and any
26 state registration data and tolerances.

1 (l) Toxicological, materials safety, and risk analysis
2 data.

3 (m) Environmental impact studies.

4 (n) Consistency with organic farming procedures and the pur-
5 poses of this act.

6 (3) Materials and practices lists shall not authorize xeno-
7 biotic materials for soil and crop management. Xenobiotic
8 anti-parasiticides and other medications may be permitted as reg-
9 ulated materials for diagnosed medical conditions, but shall not
10 be allowed as routine material. A reasonable period shall elapse
11 between application of the medication and slaughter.

12 (4) A person may petition the department to conduct a confi-
13 dential evaluation of products and materials proposed for use in
14 organic production. Petitions shall include full disclosure of
15 all ingredients, including inert ingredients and contaminants,
16 and shall demonstrate clear agronomic justification for their
17 use.

18 Sec. 11. (1) The only terms under which agricultural prod-
19 ucts may be marketed as being organically produced are "organic",
20 "organically produced", or "transitional organic". No other
21 terms shall be used to mean or imply organically produced or the
22 use of farming methods described in this act.

23 (2) A person shall not affix a label to an agricultural
24 product or otherwise advertise, invoice, or represent an agricul-
25 tural product in any way that implies that the product is organi-
26 cally produced, grown, processed, or marketed, or certified under

1 this act, except in accordance with this act and the rules
2 promulgated under this act.

3 (3) An organically produced agricultural product is misla-
4 beled if it is any of the following:

5 (a) It fails to meet the standards of quality and other
6 requirements established by this act or by rules promulgated
7 under this act.

8 (b) It is labeled "certified" or "verified", as organic or
9 organically produced, unless it was produced by a person certi-
10 fied pursuant to section 7 or certified under laws of other
11 jurisdictions that the director determines meet or exceed the
12 requirements of this act, and the name of the person that pro-
13 vides that certification or verification is stated on any identi-
14 fication, label, or advertisement.

15 (c) It is false or misleading in any particular.

16 (4) Products that meet the standards established under this
17 act and are produced according to the requirements of this act
18 except for the 3-year requirement provided in section 4(1)(c) may
19 be labeled as "transitional organic".

20 (5) The name and the address of the producer and the name of
21 the certified agent and the producer's certification number shall
22 be included on any product that is labeled as "organic",
23 "organically produced", or "transitional organic".

24 Sec. 12. A person shall not do any of the following:

25 (a) Publicly advertise in or by labeling, seal, placard,
26 newspaper, window banner, handbill, bulletin, bulletin board,

1 radio, television, or otherwise, falsely with reference to the
2 composition of agricultural products regulated under this act.

3 (b) Manufacture, sell, offer for sale, expose for sale, or
4 possess with intent to sell an agricultural product defined in
5 this act when the agricultural product fails to meet the stan-
6 dards and requirements of this act or the rules promulgated under
7 this act.

8 (c) Give false information in a matter pertaining to this
9 act or publicize false information regarding pesticide residues
10 in food.

11 (d) Impede, hinder, or obstruct the director in the dis-
12 charge of his or her duties.

13 (e) Remove or dispose of detained or embargoed products by
14 sale or otherwise without permission from the director.

15 (f) Issue a false certification of inspection under this
16 act.

17 Sec. 13. (1) The director shall do all of the following:

18 (a) Detain or embargo from sale or trade an agricultural
19 product sold, labeled, or advertised, in violation of this act.

20 (b) Investigate complaints regarding matters regulated under
21 this act.

22 (c) Investigate the offering for sale, labeling, or adver-
23 tising of an agricultural product as organically grown, organi-
24 cally processed, or produced in an organic environment, if there
25 is reason to believe that there is a violation of this act or the
26 rules promulgated under this act.

1 (2) The director may do any of the following:

2 (a) Establish a statewide advisory board on organically
3 produced agricultural products for the purposes of advising,
4 counseling, and conferring with the director on matters relevant
5 to this act. At least half of the members of a statewide
6 advisory board shall be producers of organic agricultural
7 products. Members of the board shall be reimbursed by the
8 department only for transportation expenses incurred in perform-
9 ing duties as a member of the board.

10 (b) Establish 1 or more seals or logos to identify organic
11 food produced under the certification program established in
12 section 7 and provide for it to be registered and protected under
13 applicable law; authorize the application of the seal to those
14 products conforming to the standards established under this act;
15 and provide for the revocation of authorization to use a seal or
16 logo.

17 (c) Enter into agreements with other persons for investiga-
18 tion, inspection, testing, or sampling.

19 (3) Upon tendering the fair market price, the director may
20 take samples from any person growing, handling, processing, or
21 selling organic food, livestock, or other products for the pur-
22 pose of verifying compliance with this act and the rules promul-
23 gated under this act.

24 Sec. 14. The director shall promulgate rules that do all of
25 the following:

26 (a) Establish standards for organic agricultural products.

1 (b) Develop a seal or logo for organic agricultural products
2 and prescribe conditions for the use of the seal or logo and the
3 suspension or revocation of the use of a seal or logo.

4 (c) Establish fees for certification.

5 (d) Implement and enforce this act.

6 Sec. 15. (1) In addition to any other liability or penalty
7 provided by law, the director, upon finding after notice and an
8 opportunity for a hearing that a person has violated this act or
9 a rule promulgated under this act, may impose an administrative
10 fine of not more than \$500.00 for each violation plus actual
11 costs of investigation for each violation.

12 (2) In imposing an administrative fine pursuant to
13 subsection (1), the director shall consider all of the
14 following:

15 (a) The past history of the person incurring a penalty in
16 taking all feasible steps or procedures necessary or appropriate
17 to correct a violation.

18 (b) One or more prior violations of a statute, rule, or
19 order pertaining to organic agricultural products.

20 (c) The immediacy and extent to which a violation threatens
21 the public health or safety.

22 (d) The impact on the consumers and handlers of the organi-
23 cally produced agricultural products.

24 (e) The size of the producer and volume of agricultural
25 product produced.

26 (3) The director shall advise the attorney general of the
27 failure of a person to pay an administrative fine imposed under

1 this section. The attorney general shall bring an action in a
2 court of competent jurisdiction to recover the fine. A default
3 in the payment of a civil fine or costs ordered under this act or
4 an installment of the fine or costs may be remedied by any means
5 authorized under the revised judicature act of 1961, Act No. 236
6 of the Public Acts of 1961, being sections 600.101 to 600.9947 of
7 the Michigan Compiled Laws.

8 (4) An administrative fine collected pursuant to this sec-
9 tion shall be paid by the department to the department of trea-
10 sury, deposited into the general fund and shall be available for
11 appropriation to the department for the enforcement of this act.

12 (5) A person who knowingly violates this act or a rule
13 promulgated under this act is guilty of a misdemeanor punishable
14 by imprisonment for not more than 90 days, or a fine of not less
15 than \$500.00 or more than \$5,000.00, or both, and the costs of
16 prosecution.

17 (6) If a violation of this act or a rule promulgated under
18 this act results in a conviction, the court may assess against
19 the defendant the costs of investigation, including, but not
20 limited to, the costs of laboratory analysis, and the money shall
21 be paid to the department of treasury, deposited into the general
22 fund and shall be available for appropriation to the department
23 for the enforcement of this act.

24 (7) A person who is convicted under this act is ineligible
25 for certification under this act for 5 years with respect to any
26 farm or processing operation in which that person has an
27 interest. The director may reduce the period of ineligibility if

1 the director determines that a reduction would be in the best
2 interest of the certification program established by this act.

3 Sec. 16. This act shall take effect upon the expiration of
4 90 days after the date of its enactment.