

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1535

By: Covey

COMMITTEE SUBSTITUTE

An Act relating to agriculture; amending 2 O.S. 2001, Section 1-3, as amended by Section 1, Chapter 187, O.S.L. 2002 (2 O.S. Supp. 2002, Section 1-3), which relates to the Oklahoma Agricultural Code; updating language; amending 2 O.S. 2001, Sections 5-302, 5-303, 5-304 and 5-307, which relate to the Oklahoma Organic Food Act; modifying purpose of act; adding, deleting and modifying definitions; modifying procedure for certification of organic agricultural products; requiring establishment of program; providing for issuance of a certain certificate; providing specifications; providing for promulgation of rules; specifying contents; authorizing fees; adding to powers and duties of the State Board of Agriculture; providing for certain inspections, sampling, analysis and examination; providing for consent; requiring certain testing; requiring verification of certain documents; authorizing certain licensing restrictions for certain violations; making certain actions unlawful; requiring promulgation of emergency rules; repealing 2 O.S. 2001, Section 1-3, as amended by Section 2, Chapter 173, O.S.L. 2002 (2 O.S. Supp. 2002, Section 1-3), which is a duplicate section, and Sections 5-305 and 5-306, which relate to classes of certification and certain records; providing for noncodification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 2001, Section 1-3, as amended by Section 1, Chapter 187, O.S.L. 2002 (2 O.S. Supp. 2002, Section 1-3), is amended to read as follows:

Section 1-3. For the purposes of the Oklahoma Agricultural Code, unless the context indicates otherwise:

1. "Authorized agent" means a person who has been authorized by the State Board of Agriculture to act on behalf of the Board in making investigations, inspections, performing other services, or doing any particular act or acts which have been vested by the Oklahoma Agricultural Code in the Board. A written or printed commission signed by the President of the Board shall be proof that the holder has lawful authority to act on behalf of the Board in implementing the Oklahoma Agricultural Code;

2. "Board" means the State Board of Agriculture;

3. "Code" means the Oklahoma Agricultural Code;

4. "Department" means the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry and its employees, officers, and divisions. When the name "Department of Agriculture" appears in any law, contract or other document, it shall be deemed to refer to the Oklahoma Department of Agriculture, Food, and Forestry;

5. "Director" means the Director of a division established in the State Department of Agriculture;

6. "License" means a written document issued by the Board granting authority to a person to engage in a business, occupation, or activity;

7. "Livestock" or "animals" means any cattle, bison, horses, sheep, goats, asses, mules, swine, domesticated rabbits, and chickens, turkeys, and other domesticated fowl, and any animal or bird in captivity;

8. "Permit" means a written document issued by the Board giving consent for a person to engage in an activity;

9. "Person" means the state, any municipality, political subdivision, institution, individual, public or private corporation, partnership, or other legal entity;

10. "President" means the President of the State Board of Agriculture. The President of the State Board of Agriculture shall also be designated as the Commissioner of Agriculture;

11. "Producer" means any person planting, raising, growing, or harvesting agricultural products;

12. "Quarantine" means a written document issued by the Board to restrict the movement of animals, birds, plants, or agricultural commodities into or out of a specified area for the control or prevention of diseases or pests; and

13. "Stop-sale order" or "stop-use order" means a written or printed order signed by the President or authorized agent of the Board, prohibiting the sale, offering for sale, exposure for sale, or use of any agricultural product, article, device, service, or commodity covered by the Oklahoma Agricultural Code.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 5-302, is amended to read as follows:

Section 5-302. The purpose of the Oklahoma Organic Food Act is to permit and facilitate the production and marketing of organically grown ~~erops~~ products in a manner which assures the consumer that the ~~crop has~~ products have been produced and marketed ~~without the use of prohibited substances~~ according to consistent standards and practices.

SECTION 3. AMENDATORY 2 O.S. 2001, Section 5-303, is amended to read as follows:

Section 5-303. For purposes of the Oklahoma Organic Food Act:

1. "Certification or certified" means ~~the annual process by which a grower of organic foods meets the standards promulgated by the State Board of Agriculture pursuant to the Oklahoma Organic Food Act~~ a determination made by a certifying agent that a production or handling operation is in compliance with this subarticle and rules promulgated pursuant thereto;

2. "Certificate of Organic ~~farming~~ Production" means ~~production of crops based upon a system of soil and crop management that relies on building humus levels through crop rotations, recycling organic wastes, and applying balanced mineral amendments and that uses, when necessary, mechanical, botanical, or biological controls~~ an official document issued by an accredited certifying agent to document the certification of a production or handling operation;

3. "Organic food Certifying agent" means ~~crops produced under a system of organic farming and which are processed, packaged, transported, and stored to retain nutritional value without the use of artificial preservatives, coloring agents or other additives, ionizing radiation, or prohibited substances~~ a person accredited by the Secretary of the United States Department of Agriculture (USDA) to certify a producer or handler for the purposes of the Oklahoma Organic Food Act or the Organic Food Production Act of 1990, as amended and rules promulgated pursuant thereto;

4. "Producer Certified operation" means a ~~person who is engaged in the business of planting, growing, or harvesting crops~~ crop or livestock production, wild-crop harvesting, or handling operation, or portion of an operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Oklahoma Organic Food Act or the Organic Food Production Act of 1990, as amended and the rules promulgated pursuant thereto;

5. "Prohibited substance Organic food" means a ~~chemical compound or formulation which is not permitted to be used in organic production, processing, or handling~~ edible consumer products produced, processed, packaged, and handled under a system of organic production; and

6. "Transitional period Organic production" means ~~the three-year interval required to change from nonorganic production methods to organic farming~~ a production system that is managed in accordance

with the Oklahoma Organic Food Act and rules promulgated pursuant thereto or the Organic Food Act of 1990, 7 U.S.C., Section 6501 et seq., as amended, to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster recycling of resources, promote ecological balance, and conserve biodiversity; and

7. "Producer" means a person who engages in the business of planting, growing, or harvesting food, fiber, feed, and other agricultural-based consumer products.

SECTION 4. AMENDATORY 2 O.S. 2001, Section 5-304, is amended to read as follows:

Section 5-304. A. The State Board of Agriculture ~~may issue a license upon request if all requirements of the Oklahoma Organic Food Act have been met. A properly completed license application shall be submitted with a fee of One Hundred Dollars (\$100.00) by March 31 of each year. No person shall market, label, or advertise any food as being "Certified Organic" or "Organic Certification Transitional" unless in compliance with the Oklahoma Organic Food Act and/or~~ shall establish a program for the certification of organic agricultural products. The Board shall submit this program to the Secretary of the USDA for accreditation as required by the Organic Food Production Act of 1990, as amended, 7 U.S.C., Section 6501 et seq. and rules promulgated pursuant thereto. Nothing in the Oklahoma Organic Food Act shall be construed to prevent a person from offering for sale crops produced under organic farming practices, so long as the producer does not label the product as certified by the Board as meeting the conditions for "certification" specified by the Oklahoma Organic Food Act Upon accreditation, the Board shall act as a certifying agent and issue a Certificate of Organic Production to an operation that has met all requirements of the Oklahoma Organic Food Act and rules promulgated pursuant thereto.

B. ~~The Board is authorized to inspect, sample, analyze, examine records, and test any food claimed to be organically grown, distributed within the state to determine if the food is in compliance with the Oklahoma Organic Food Act. The Board has the authority to enter upon public or private property at any reasonable time for the purpose of administering the Oklahoma Organic Food Act. Any licensee or applicant for license subject to the provisions of the Oklahoma Organic Food Act shall be deemed to have given consent to any authorized agent of the Board to access, enter, inspect, or monitor the property. Refusal to allow access, entry, or inspection shall constitute grounds for the denial, nonrenewal, suspension, or revocation of a license~~ shall promulgate appropriate rules for the administration of the program for the certification of organic agricultural products, including:

1. Standards for the analysis, inspection, and certification of the organic agricultural products;

2. Records required of producers and handlers of organic agricultural products;

3. Standards for the certification of producers and handlers of organic agricultural products;

4. Lists of approved and prohibited substances for use in the production and handling of organic agricultural products; and

5. A schedule of fees for initial certification and inspection for continued certification as a producer or handler of organic agricultural products.

C. The Board is authorized to ~~promulgate rules as necessary to administer and establish certification standards to carry out the Oklahoma Organic Food Act~~ inspect, sample, analyze, examine records, and test any product claimed to be organically grown or distributed within the state to determine if the product is in compliance with the Oklahoma Organic Food Act. The Board has the authority to enter upon public or private property at any reasonable time for the

purpose of administering the Oklahoma Organic Food Act. Any certified operation or applicant for a Certificate of Organic Production shall be deemed to have given consent to any authorized agent of the Board to access, enter, inspect, or monitor the property. Refusal to allow access, entry, or inspection shall constitute grounds for the denial, nonrenewal, suspension, or revocation of certification.

D. The Board is authorized to revoke, suspend or not renew any license upon satisfactory proof that the permittee has violated any of the provisions of the Oklahoma Organic Food Act or rules promulgated thereto shall require laboratory analysis of a product claimed to be organically grown if it has reasonable cause to suspect the product may contain a substance not approved for organic production.

E. All new applicants are required to have their soil-growing media and irrigation water, if not municipal, assayed for the presence of pesticide residues.

F. Verification documents that may be required include, but are not limited to, questionnaires, farm plans, affidavits, inspection reports, laboratory assays, and other documents to verify the path taken by an organic food product through post-harvest handling and distribution.

G. The Board may conduct audits of all documents for verification that producers meet the requirements of the Oklahoma Organic Food Act and rules.

H. The Board is authorized to promulgate rules as necessary to administer the Oklahoma Organic Food Act and establish certification standards to carry out the Oklahoma Organic Food Act.

I. The Board is authorized to revoke, suspend, or not renew any license upon satisfactory proof that the permittee has violated any of the provisions of the Oklahoma Organic Food Act or rules promulgated pursuant thereto.

SECTION 5. AMENDATORY 2 O.S. 2001, Section 5-307, is amended to read as follows:

Section 5-307. A. A person shall not sell, offer for sale, label, or advertise an agricultural product with the representation that it is organic if the person knows or has reason to know that it has not been certified pursuant to the Oklahoma Organic Food Act or the Organic Production Act of 1990, as amended, 7 U.S.C., Section 6501 et seq. and the rules and regulations promulgated pursuant thereto.

B. The State Board of Agriculture is authorized to issue a written or printed "stop-sale" or "notice of violation" order to the owner or custodian of a ~~feed~~ product being labeled, advertised or offered or exposed for sale in violation of the Oklahoma Organic Food Act or rules promulgated pursuant thereto.

~~B.~~ C. Any person violating the provisions of the Oklahoma Organic Food Act ~~shall, upon conviction thereof, be~~ or rules promulgated pursuant thereto may be:

1. Assessed an administrative fine as specified in Section 2-18 of this title; and

2. Deemed guilty of a misdemeanor and, upon conviction thereof, may be punished by a fine of not more than One Thousand Dollars (\$1,000.00).

D. Each day a violation continues shall be a separate offense.

SECTION 6. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The State Board of Agriculture shall immediately promulgate emergency rules for the Oklahoma Organic Food Act in compliance with state and federal laws and regulations. The emergency rules shall detail the required fees, certification standards, and procedures necessary for organic production or handling to be certified under the Oklahoma Organic Food Act.

SECTION 7. REPEALER 2 O.S. 2001, Section 1-3, as amended by Section 2, Chapter 173, O.S.L. 2002 (2 O.S. Supp. 2002, Section 1-3) and Sections 5-305 and 5-306, are hereby repealed.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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