

ENROLLED HOUSE
BILL NO. 1535

By: Covey and Maddux of the
House

and

Price of the Senate

An Act relating to agriculture; 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; amending 2 O.S. 2001, Section 1950.2, which relates to the Oklahoma Ethanol Development Advisory Committee; modifying certain dates; amending 2 O.S. 2001, Section 8-77.3, as last amended by Section 1 of Enrolled House Bill No. 1008 of the 1st Session of the 49th Oklahoma Legislature, which relates to the Oklahoma Fertilizer Act; modifying definition; amending 2 O.S. 2001, Sections 2-1 and 2-3, which relate to the State Board of Agriculture and the President of the State Board of Agriculture; modifying membership of the Board; modifying certain requirements; modifying makeup of agricultural districts; providing for duties of currently appointed members; terminating certain board membership; authorizing remainder of the terms of office; modifying future appointment terms; making term of certain board member coterminous with Governor; making certain member President of Board; removing certain authority of Board; repealing 2 O.S. 2001, 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 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 ~~crops~~ products in a manner which assures the consumer that the ~~crop~~ products have been produced and marketed ~~without the use of prohibited substances~~ according to consistent standards and practices.

SECTION 2. 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 Production 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 3. 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 4. 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 Food 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 ~~food~~ 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 5. 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 6. AMENDATORY 2 O.S. 2001, Section 1950.2, is amended to read as follows:

Section 1950.2 A. There is hereby created until June 1, ~~2003~~ 2006, the Oklahoma Ethanol Development Advisory Committee. The Committee shall consist of the following fifteen (15) members:

1. The Director of the Department of Agriculture or designee;
2. The Director of the Department of Environmental Quality or designee;
3. The Director of the Oklahoma Conservation Commission or designee;
4. The Director of the Oklahoma Corporation Commission;
5. One member appointed by and representing the Natural Resources Conservation Service of the United States Department of Agriculture;
6. One member appointed by and representing Oklahoma State University;
7. Three members appointed by the Speaker of the House of Representatives:

- a. one of which represents the ethanol industry in this state,
- b. one of which represents labor interests in this state, and
- c. one of which is a producer of grain sorghum;

8. Three members appointed by the President Pro Tempore of the Senate:

- a. one of which is a producer of corn,
- b. one of which represents the oil industry in this state with expertise in marketing or trading, and
- c. one of which is actively engaged in farming in this state; and

9. Three appointed by the Governor:

- a. one of which represents the ethanol industry,
- b. one of which is a producer of wheat, and
- c. one of which is engaged in general farming in this state.

B. Members of the Committee shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in the State Travel Reimbursement Act by their appointing authority.

C. The Oklahoma Department of Agriculture shall provide space for meetings of the Committee and shall provide other assistance and staffing needs of the Committee.

D. Members shall serve at the pleasure of their appointing authority. Vacancies occurring on the Advisory Committee shall be filled by their appointing authority.

E. The Director of the Department of Agriculture shall call the first meeting by September 1, 2001. At the first meeting the Advisory Committee shall elect a chair and vice-chair. A majority of the members on the Advisory Committee shall represent a quorum and a majority present at a meeting may act for or on behalf of the Advisory Committee.

F. The Oklahoma Ethanol Development Advisory Committee shall:

1. Conduct a systematic review and study of the ethanol industry in Oklahoma and in other states;

2. Study the feasibility of developing and enhancing the ethanol industry in Oklahoma;

3. Study processing, market development, promotion, distribution, and research on products derived from grain, ethanol, or ethanol components, coproducts, or by-products to provide for:

- a. expanded use of Oklahoma agricultural products,
- b. development of protein which will be more efficiently stored and marketed to foreign nations rather than the present method of simple export of unprocessed grain products,
- c. alternative local outlets for Oklahoma agricultural products which can be particularly utilized in times of depressed grain prices. Local outlets may include ethanol plants, agricultural production facilities, or facilities related to the processing, marketing, or distribution of ethanol or products derived from ethanol or ethanol components, coproducts, or by-products,
- d. promotion and market development, in cooperation with private industry, of ethanol or products derived from ethanol or ethanol components, coproducts, or by-products, and
- e. sponsorship of research and development of industrial and commercial uses for agricultural ethanol and for by-products resulting from the manufacturing of agricultural ethanol in order to enhance economic feasibility and marketing potential of such products and processes;

4. Methodology best to cooperate with private industry to establish ethanol-related production facilities in Oklahoma to create demand for agricultural products;

5. Recommend policies or programs to enhance the ability of Oklahoma agricultural landowners to participate in ethanol development and production. Such recommendations shall include potential policies or programs designed to optimize economic benefits to agricultural producers participating in ethanol development. Such policies or programs may include, but are not limited to, identifying existing, or the potential of creating, nonprofit organizations or other public or private entities capable of assisting in ethanol development, production and marketing;

6. Encourage the production of educational and advisory materials regarding ethanol production on agricultural lands and participation in systems of carbon or greenhouse emissions trading;

7. Identify and recommend areas of research needed to better understand and quantify the processes of ethanol production;

8. Study methods of funding or supporting ethanol production, development and marketing, including but not limited to the levy of assessments on the sale of certain grains, tax credits, or other economic and revenue enhancements; and

9. Make any other recommendations deemed necessary by the Oklahoma Ethanol Development Advisory Committee pursuant to the Oklahoma Ethanol Development Study Act.

G. On or before December 1, ~~2002~~ 2006, the Department of Agriculture, in consultation with the Oklahoma Ethanol Development

Advisory Committee shall prepare a report of recommendations regarding the development and enhancement of the ethanol industry in Oklahoma.

SECTION 7. AMENDATORY 2 O.S. 2001, Section 8-77.3, as last amended by Section 1 of Enrolled House Bill No. 1008 of the 1st Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 8-77.3 As used in the Oklahoma Fertilizer Act:

1. "Brand" means a term, design, or trademark used in connection with one or several grades of fertilizer;
2. "Broker" means a person who negotiates sales and purchases between a manufacturer, distributor, final consumer, or retailer of fertilizer;
3. "Bulk fertilizer" means fertilizer distributed in a nonpackaged form;
4. "Commercial fertilizer" means fertilizer sold in bulk quantities or packages greater than thirty (30) pounds;
5. "Custom blend" means fertilizer formulated according to specifications furnished by the final consumer;
6. "Custom blender" means a person who mixes or commingles fertilizer into a custom blend and who distributes the special blend. A custom blender shall not be required to register each grade of fertilizer in the following circumstances:
 - a. the custom blend is formulated according to specifications furnished by the ultimate consumer prior to mixing, and
 - b. the custom blend is prepared by a lawn care or tree service company that mixes or commingles fertilizer and who applies the special blend for the ultimate consumer;
7. "Deficiency" means the amount of nutrient found by analysis less than that guaranteed, which may result from a lack of nutrient ingredients or from lack of uniformity;
8. "Distribute" means to import, consign, manufacture, blend, offer for sale, sell, barter, commercially apply, or supply fertilizer in this state including, but not limited to, the delivery of bagged, labeled and registered fertilizer to a nonregistrant that sells the fertilizer in this state;
9. "Distributor" means any person who distributes fertilizer;
10. "Fertilizer" means any substance containing one or more recognized plant nutrients which are used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, and wood ashes;

11. "Fertilizer dealer" means any person operating a business that is engaged in the distribution or sale of fertilizer. The term "fertilizer dealer" shall not include an ultimate consumer who is engaged in the physical act of application of fertilizer or a retail store selling only bagged registered commercial fertilizer;

12. "Grade" means the percentage of total nitrogen, available phosphate, and soluble potash stated in whole numbers. Specialty fertilizer may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphate, and soluble potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units;

13. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N)	_____	%
Available Phosphate (P2O5)	_____	%
Soluble Potash (K2O)	_____	%.

When any plant nutrients, substances, or compounds are guaranteed, they shall be subject to inspection and analysis;

14. "Guarantor" means the person responsible to the State Board of Agriculture for any claims or guarantees associated with the manufacture, distribution, and use of a fertilizer;

15. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer;

16. "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying fertilizer;

17. "Labeling" means all written, printed, or graphic matter, upon or accompanying any fertilizer, or advertisements, brochures, posters, or television and radio announcements used in promoting the sale of fertilizer;

18. "Licensee" means the person receiving a license to distribute fertilizer under the provisions of the Oklahoma Fertilizer Act;

19. "Manipulated manures" means substances composed primarily of animal excreta, plant remains, or mixtures of these substances which have been processed by natural or mechanical drying or composting and no other chemicals have been added;

20. "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials;

21. "Official sample" means any sample of fertilizer taken by an authorized agent of the Board;

22. "Percent" or "percentage" means the portion of each hundred units of weight;

23. "Primary nutrient" means total nitrogen, available phosphate, and soluble potash;

24. "Registrant" means the person registering fertilizer under the provisions of the Oklahoma Fertilizer Act;

25. "Specialty fertilizer" means fertilizer sold in packages of less than thirty (30) pounds;

26. "Ton" means a net weight of two thousand (2,000) pounds avoirdupois;

27. "Ultimate consumer" means a person who receives fertilizer for personal use. The term "ultimate consumer" shall not include a person distributing fertilizer for profit to the general public; and

28. "Unmanipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of these substances which have not been processed in any manner.

SECTION 8. AMENDATORY 2 O.S. 2001, Section 2-1, is amended to read as follows:

Section 2-1. A. 1. The State Board of Agriculture, ~~which~~ shall be the Board of Agriculture, ~~created by Section 31, of Article 6, VI of the Oklahoma Constitution.~~ The Board shall consist of five (5) members appointed by the Governor, with the advice and consent of the Senate. Four of such members shall be appointed from within and represent the agricultural district established by subsection B of this section. One member shall be appointed from the state at large.

2. The members shall be farmers who have:

~~1. At~~

a. at least five (5) years practical experience during the ten (10) years immediately preceding their appointment, and

~~2. Lived~~

b. lived on and operated a farm after reaching the age of twenty-one (21) years.

B. For the purpose of appointments to the Board, ~~five~~ four agricultural ~~commodities~~ districts are hereby created and shall consist of the following counties:

DISTRICT

COUNTIES

NO.

1.....~~Alfalfa, Beaver, Blaine, Canadian, Cimarron, Custer, Dewey, Ellis, Garfield, Grant, Harper, Kingfisher, Major, Texas, Woods and Woodward~~ Atoka, Bryan, Choctaw, Coal, Haskell, Hughes, Johnston, Latimer, LeFlore, Marshall, McCurtain, McIntosh, Muskogee, Okfuskee, Okmulgee, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Seminole and Sequoyah.

- 2.....~~Craig, Creek, Delaware, Kay, Lincoln, Logan, Mayes, Noble, Nowata, Osage, Ottawa, Pawnee, Payne, Rogers and Washington~~ Adair, Cherokee, Craig, Creek, Delaware, Kay, Lincoln, Logan, Mayes, Noble, Nowata, Oklahoma, Osage, Ottawa, Pawnee, Payne, Rogers, Tulsa, Wagoner and Washington.
- 3.....~~Beckham, Caddo, Carter, Comanche, Cotton, Grady, Greer, Harmon, Jackson, Jefferson, Kiowa, Love, Roger Mills, Stephens, Tillman and Washita~~ Alfalfa, Beaver, Blaine, Cimarron, Custer, Dewey, Ellis, Garfield, Grant, Harper, Kingfisher, Major, Roger Mills, Texas, Woods and Woodward.
- 4.....~~Atoka, Bryan, Cleveland, Coal, Garvin, Hughes, Johnston, McClain, Marshall, Murray, Okfuskee, Oklahoma, Pontotoc, Pottawatomie and Seminole~~ Beckham, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Garvin, Grady, Greer, Harmon, Jackson, Jefferson, Kiowa, Love, McClain, Murray, Stephens, Tillman and Washita.
- 5.....~~Adair, Cherokee, Choctaw, Haskell, Latimer, LeFlore, McCurtain, McIntosh, Muskogee, Okmulgee, Pittsburg, Pushmataha, Sequoyah, Tulsa and Wagoner.~~

C. One member of the Board shall be appointed from each district. ~~Members of the Board shall be appointed for a term of five (5) years.~~

D. 1. On the effective date of this act, each district established by subsection B of this section shall be represented by the current board member position as follows:

- a. the board member position currently representing District 5 shall represent the new District 1,
- b. the board member position currently representing District 2 shall represent the new District 2,
- c. the board member position currently representing District 1 shall represent the new District 3, and
- d. the board member position currently representing District 4 shall represent the new District 4.

2. The board member position currently serving District 3 shall be terminated.

3. Except as otherwise provided in this subsection, all board members serving on the effective date of this act shall serve the remainder of the term of office to which the board member was originally appointed. Thereafter, successor board members shall be appointed for terms of four (4) years. The at-large member shall serve a term coterminous with that of the Governor.

4. In case of vacancy caused by the removal, death, resignation, or disability of any member, the Governor shall appoint a new member from the same district for which a vacancy was vacated to serve for the unexpired term.

SECTION 9. AMENDATORY 2 O.S. 2001, Section 2-3, is amended to read as follows:

Section 2-3. A. The at-large member appointed by the Governor, pursuant to Section 2-1 of this title, shall be the President of the State Board of Agriculture ~~shall be elected by the Board from its membership,~~ and shall serve at the pleasure of the ~~Board~~ Governor.

B. The President shall be the executive officer of the Board, and, in the absence of the Board, shall, subject to approval of the Board, perform all of the duties imposed by law.

C. The Board shall elect a Secretary, who shall not be a member of the Board, ~~and.~~ The Board shall fix the duties of the person appointed.

SECTION 10. REPEALER 2 O.S. 2001, Sections 5-305 and 5-306, are hereby repealed.

SECTION 11. 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.

Passed the House of Representatives the 16th day of May, 2003.

Presiding Officer of the House of
Representatives

Passed the Senate the 21st day of May, 2003.

Presiding Officer of the Senate