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Chapter No. 482
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JN 1cc/HB

SENATE BILL NO. 2450

Originated in Senate *Jenna D. Hughes* Secretary

SENATE BILL NO. 2450

AN ACT TO CONFORM THE MISSISSIPPI ORGANIC CERTIFICATION PROGRAM TO THE UNITED STATES DEPARTMENT OF AGRICULTURE NATIONAL ORGANIC PROGRAM; TO AMEND SECTION 69-47-1, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN DEFINITIONS; TO AMEND SECTION 69-47-5, MISSISSIPPI CODE OF 1972, TO DELETE REQUIREMENT THAT A SELLER OF ORGANIC FOOD MUST BE CERTIFIED BY THE DEPARTMENT OF AGRICULTURE AND COMMERCE; TO AMEND SECTION 69-47-7, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION 69-47-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN ACCREDITED CERTIFIER MAY CERTIFY ORGANIC CROPS; TO AMEND SECTION 69-47-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CERTIFIER SHALL ASSUME CERTAIN DUTIES OF THE DEPARTMENT OF AGRICULTURE AND COMMERCE; TO DELETE THE REQUIREMENT THAT THE DEPARTMENT OF AGRICULTURE AND COMMERCE MUST CONDUCT INSPECTIONS; TO AMEND SECTION 69-47-17, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT APPLICATIONS MUST BE SUBMITTED TO A CERTIFIER; TO AMEND SECTION 69-47-19, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT A SELLER OF ORGANIC PRODUCTS MUST BE CERTIFIED BY A CERTIFIER INSTEAD OF THE DEPARTMENT OF AGRICULTURE AND COMMERCE; TO AMEND SECTION 69-47-21, MISSISSIPPI CODE OF 1972, TO DELETE REFERENCE TO THE DEPARTMENT OF AGRICULTURE AND COMMERCE; TO AMEND SECTION 69-47-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTIFIERS SHALL PERFORM INSPECTIONS; TO AMEND SECTION 69-47-27, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT THAT A PERSON MUST RECEIVE PRIOR APPROVAL FROM THE DEPARTMENT OF AGRICULTURE AND COMMERCE BEFORE USING THE MISSISSIPPI CERTIFIED ORGANIC MARK; TO REPEAL SECTION 69-47-3, MISSISSIPPI CODE OF 1972, WHICH CREATED AN ADVISORY COMMITTEE TO THE ORGANIC CERTIFICATION PROGRAM; TO REPEAL SECTION 69-47-33, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZED THE DEPARTMENT OF AGRICULTURE AND COMMERCE TO DEVELOP AN ORGANIC CERTIFICATION PROGRAM FOR ORGANIC MEAT, ORGANIC FISH, ORGANIC POULTRY AND ORGANIC SEAFOOD; TO PROVIDE FOR THE REPEAL OF THIS ACT ON JULY 1, 2013; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 69-47-1, Mississippi Code of 1972, is amended as follows:

69-47-1. For the purpose of this chapter, the following terms shall have the following meanings:

(a) "Agricultural product" means any agricultural commodity or product, whether raw or processed, that is marketed for human consumption.

(b) "Certified organic farm" means a farm or portion of a farm or a site where agricultural products are produced that is certified by the United States Department of Agriculture under its National Organic Program standards as utilizing a system of organic farming.

(c) "Certifier" means an organic certifying agent accredited by the United States Department of Agriculture National Organic Program.

(d) "Commissioner" means the Commissioner of the Mississippi Department of Agriculture and Commerce.

(e) "Department" means the Mississippi Department of Agriculture and Commerce.

(f) "EPA" means the United States Environmental Protection Agency.

(g) "Farm plan" means a plan of management of an organic farm that has been agreed to by the producer or handler meeting all requirements established by the United States Department of Agriculture National Organic Program and that includes written plans concerning all aspects of agricultural production or handling, including all practices required under this chapter.

(h) "FDA" means the United States Food and Drug Administration.

(i) "Greenhouse unit" or "unit" means a structure intended or used for the production of agricultural products.

(j) "Handler" means any person engaged in the business of handling agricultural products, except such term shall not include final retailers of agricultural products that do not process agricultural products.

(k) "Mississippi organic materials and practices (MOMP)" means a list of approved and prohibited substances and practices as adopted.

(l) "Organic farming" means a food production system based on farm management methods or practices that rely on building soil fertility by utilizing crop rotation, recycling of organic wastes, application of unsynthesized minerals and, when necessary, mechanical, botanical or biological pest control.

(m) "Organic food" means a food which is labeled as organic or organically grown and which has been produced, transported, distributed, processed and packaged without the use of synthetic pesticides, synthetically compounded fertilizers, synthetic growth hormones, genetically modified organisms or artificial radiation and which has been verified by the department as complying with all provisions of this chapter.

(n) "Organically managed or produced" means an agricultural product that is produced and handled in accordance with all the provisions of this chapter and any regulations adopted thereunder.

(o) "Person" means an individual, group of individuals, corporation, association, organization, cooperative or other entity.

(p) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest and any substance or combination of substances intended for use as a plant regulator, defoliant, desiccant or any substance the commissioner determines to be a pesticide.

(q) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, preserving, dehydrating, freezing or otherwise manufacturing and includes the packaging, canning, jarring or otherwise enclosing food in a container.

(r) "Producer" means a person who engages in the business of growing or producing food, feed and ornamental plants.

(s) "Prohibited substances, fertilizers, materials, pesticides" mean those substances, fertilizers, materials,

pesticides or practices prohibited by this chapter or regulations from use in a certified organic farming operation.

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

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

(v) "Organic assisting agent" means the Mississippi State University Cooperative Extension Service.

SECTION 2. Section 69-47-5, Mississippi Code of 1972, is amended as follows:

69-47-5. (1) Any producer who sells or intends to sell organic food shall apply to be organically certified in accordance with this chapter.

(2) (a) An applicant for certification must document that the land, individual field or greenhouse units to be certified shall be managed organically. Documentation for certification shall be in the form of a detailed, three-year farm plan for land, fields or units and in a format acceptable under the United States Department of Agriculture National Organic Program standards. The application shall be reviewed by the organic certification program director.

(b) An applicant for certification may seek the aid of the Mississippi State University Cooperative Extension Service, which shall be the organic assisting agent to provide technical assistance and information in the application process to ensure that the necessary requirements of the application are met before submission to the certifier for approval. The organic assisting agent shall meet the requirements established by the United States Department of Agriculture National Organic Program standards before providing such assistance or offering any training to individuals in the area of organic farming.

(3) The farm plan shall include:

(a) Rotation and nutrient-stabilization plans for each field or unit under organic management;

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

(c) A map of the field to be organically managed which also indicates all buffer zones and their width, with a buffer zone separating land managed organically from other cultivated agricultural land and a buffer zone separating greenhouse units managed organically from other units;

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

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

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

(4) A crop grown in an organically managed field, any part of which is located in close proximity to a field to which a prohibited pesticide has been applied, shall be tissue-tested for residues of that pesticide before the harvest of the organic crop.

(5) * * * A field that is part of a farm shall not be certified as organically managed * * * unless there exist distinct, defined boundaries between fields under organic management and other fields.

(6) * * * Land that has no previous history as cultivated cropland, orchard or improved pasture, and that is being converted to organic for the sole purpose of replacing land abandoned because of chemical contamination or depleted fertility resulting from previous farm-management practices shall not be certified.

(7) An applicant for certification may present soil fertility test results for each field or greenhouse unit to be certified initially and every third year thereafter.

(8) An applicant may also present the results of water residue and plant-tissue tests as required by the department.

(9) The department shall not provide technical assistance to any applicant in the preparation of an application or development of a farm plan for certification or recertification as an organic farming operation, except in those instances in which the organic assisting agent lacks the ability to provide such assistance and defers its ability to do so to the department. The department shall be responsible for approving application for certification, managing and administering the certification program, performing inspections of records, products and organic farming fields to determine compliance with this act, the enforcement of the penalties for violations thereof, and any other duties for the necessary implementation of this act for which they have authority and which do not create a conflict of interest.

SECTION 3. Section 69-47-7, Mississippi Code of 1972, is amended as follows:

69-47-7. (1) Every precaution shall be taken to avoid pesticide or other contaminating residues on agricultural products sold or labeled as organic. In cases of unavoidable environmental contamination, residues shall not exceed the limits set by the department. For any substance not currently regulated by federal law, the department may set appropriate action levels.

(2) The department may sample a percentage of organic raw agricultural commodities and organic processed food products as part of the state pesticide residue monitoring program. Results obtained from organic produce and organically processed product samples shall be compiled in a separate annual report and submitted to the United States Department of Agriculture.

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

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

- (a) In cases of pesticide drift;
- (b) When farm or handling facility inspection leads to suspicion of residue problems;
- (c) Suspicion that the soil harbors contaminants;
- (d) Suspicion that irrigation water or rainfall contains residues;

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

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

SECTION 4. Section 69-47-9, Mississippi Code of 1972, is amended as follows:

69-47-9. (1) The certifier may certify a crop as organic only if harvest occurs at least three (3) years after the most recent use of a prohibited pesticide and at least three (3) years after the most recent use of a prohibited fertilizer.

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

SECTION 5. Section 69-47-13, Mississippi Code of 1972, is amended as follows:

69-47-13. (1) The following records shall be kept for each farm, field or other agricultural production unit for which application for certification is made:

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

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

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

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

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

(f) Other documentation required to complete the application for certification or recertification as required under Section 69-47-5;

(g) Records of any training, application assistance and farm-plan development assistance received from the organic assisting agent in the preparation and completion of the application for certification or recertification.

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

(a) The certifier-devised questionnaire covering all nonfarm aspects of food processing and manufacturing, if applicable, to be prepared for each stage of the processing where

a food is substantially changed from its previous state and covering every aspect of the product relevant to the certifier's certification standards; and

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

* * *

(3) The department or the certifier may conduct unannounced inspections of certified producers and certified processors.

SECTION 6. Section 69-47-17, Mississippi Code of 1972, is amended as follows:

69-47-17. (1) Applications submitted under this chapter shall be in writing on a form acceptable to the United States Department of Agriculture National Organic Program.

(2) A separate application shall be submitted for each farm, farm unit, processing plant, distribution facility or retail operation, if operated as a separate entity by the owner.

(3) Applications and verification documents shall be submitted to the appropriate certifier.

* * *

SECTION 7. Section 69-47-19, Mississippi Code of 1972, is amended as follows:

69-47-19. (1) The following conditions apply generally to the retail sale of organic products:

(a) Any person selling organic products shall be certified by an appropriate certifier, shall renew certification annually and shall abide by the provisions of this chapter.

* * *

(b) Products bearing a Mississippi organic or transitional organic mark shall be easily identifiable to consumers and shall be clearly distinguishable from similar products that are not Mississippi certified or transitional organic.

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

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

SECTION 8. Section 69-47-21, Mississippi Code of 1972, is amended as follows:

69-47-21. (1) * * * Drugs or drug ingredients shall not be certified under this chapter.

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

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

SECTION 9. Section 69-47-23, Mississippi Code of 1972, is amended as follows:

69-47-23. (1) Certifiers shall perform inspections of certified producers, processors, retailers, distributors and applicants for certification at a time when normal production, post-harvest or sales activity can be observed.

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

(a) That the products were organically managed in compliance with this chapter and regulations or that of the state of origin; or

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

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

(4) Any person with cause to believe that any provision of this chapter has been violated may file a written or oral complaint with the United States Department of Agriculture National Organic Program setting forth the facts of the alleged violation.

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

SECTION 10. Section 69-47-27, Mississippi Code of 1972, is amended as follows:

69-47-27. (1) The labeling, advertising or otherwise representing of food to be organic by any producer, handler, distributor or retailer is prohibited, unless the food complies with this chapter and regulations.

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

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

* * *

SECTION 11. Section 69-47-3, Mississippi Code of 1972, which created an advisory committee to the organic certification program, is repealed.

SECTION 12. Section 69-47-33, Mississippi Code of 1972, which authorized the Department of Agriculture and Commerce to develop an organic certification program for organic meat, organic fish, organic poultry and organic seafood, is repealed.

SECTION 13. Sections 1 through 12 of this act shall stand repealed on July 1, 2013.

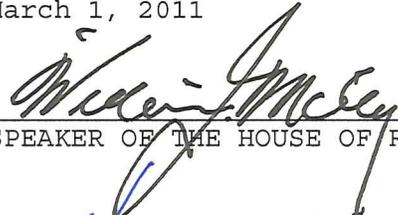
SECTION 14. This act shall take effect and be in force from and after its passage.

PASSED BY THE SENATE
February 2, 2011



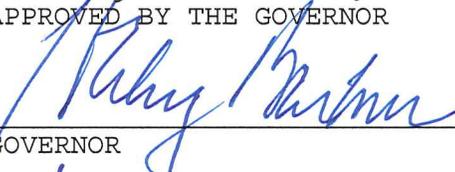
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 1, 2011



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

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