

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 821

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Fred Luna

AN ACT

RELATING TO ORGANIC COMMODITIES; AMENDING AND ENACTING CERTAIN  
SECTIONS OF THE ORGANIC COMMODITY ACT; IMPOSING A CIVIL  
PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 76-22-4 NMSA 1978 (being Laws 1990,  
Chapter 122, Section 4, as amended) is amended to read:

"76-22-4. DEFINITIONS. -- As used in the Organic Commodity  
Act:

A. "advertise" means to present a commercial  
message in any medium, including but not limited to print,  
radio, television, sign, display, label, tag or oral  
statement;

B. "agricultural commodity" means any distinctive  
type of agricultural, horticultural, floricultural,

underscored material = new  
[bracketed material] = delete

1 viticultural, vegetable or animal product of any class in its  
2 natural or processed state;

3 C. "assessment" means funds collected by the  
4 commission as provided for ~~[under]~~ in the Organic Commodity  
5 Act;

6 D. "certification" means formal verification by  
7 ~~[the commission]~~ a certifying agent that food articles are  
8 organically produced;

9 E. "certification handbook" means a collection of  
10 production and handling standards and rules adopted and  
11 promulgated by the commission;

12 F. "certifying agent" means the commission and any  
13 other person designated as a certifying agent by the United  
14 States department of agriculture;

15 ~~[F.]~~ G. "commission" means the organic commodity  
16 commission;

17 ~~[G.]~~ H. "food article" means any raw or processed  
18 agricultural commodity or product derived from livestock,  
19 including any fruits, vegetables, berries, eggs, seeds or  
20 dairy or grain products marketed in New Mexico for human or  
21 animal consumption;

22 ~~[H.]~~ I. "handle" means to sell, process, transport  
23 or package organically produced food articles;

24 ~~[I.]~~ J. "handler" means any individual in the  
25 business of handling organically produced food articles;

. 136590. 1

underscored material = new  
[bracketed material] = delete

1           ~~[J-]~~ K. "handling operation" means any operation  
2 or portion of an operation that:

3                   (1) receives or otherwise acquires  
4 organically produced food articles from the producer of those  
5 organically produced food articles;

6                   (2) prepares organically produced food  
7 articles for market; or

8                   (3) processes, packages, transports or stores  
9 organically produced food articles;

10           ~~[K-]~~ L. "label" means a commercial message in a  
11 printed medium that is affixed by any method to a receptacle,  
12 including a container or package;

13           ~~[L-]~~ M. "materials list" means a list of approved  
14 and prohibited substances to be determined by the commission,  
15 in compliance with the national materials list, and set forth  
16 in the certification handbook;

17           ~~[M-]~~ N. "ombudsman" means a member of the  
18 commission, who has the function of facilitating communication  
19 between certified persons and the commission by addressing  
20 certified persons' complaints, participating in the fact-  
21 finding process, investigating complaints, arbitrating when  
22 possible and advocating for the certified person when  
23 necessary; except that the ombudsman shall not represent a  
24 certified person before the commission or any other fact-  
25 finding body;

underscored material = new  
[bracketed material] = delete

1           ~~[N-]~~ Q. "organic certification program" means a  
2 program designed to ensure that a product is produced,  
3 handled, transported and marketed in compliance with the  
4 Organic Commodity Act and the federal Organic Foods Production  
5 Act of 1990;

6           ~~[O-]~~ P. "organically certified farm" means a farm  
7 or portion of a farm that is certified by the commission as  
8 utilizing organic productive techniques as set forth by the  
9 commission in the certification handbook provided for ~~[under]~~  
10 in the Organic Commodity Act;

11           ~~[P-]~~ Q. "organically certified handling operation"  
12 means any handling operation or portion of any handling  
13 operation that is certified by the commission and operated by  
14 organically certified handlers;

15           ~~[Q-]~~ R. "organically produced label" means a label  
16 established for the purpose of indicating compliance with the  
17 certification standards promulgated ~~[under]~~ pursuant to  
18 provisions of the Organic Commodity Act;

19           ~~[R-]~~ S. "organically produced" means food articles  
20 produced using organic productive techniques on an organically  
21 certified farm and handled by an organically certified  
22 handling operation;

23           ~~[S-]~~ T. "organic productive technique" means a  
24 system of farming that substitutes appropriate farm management  
25 practices for chemical and technological methods and enhances

underscored material = new  
[bracketed material] = delete

1 rather than replaces existing biological systems to ensure  
2 minimum adverse effects on human health and the environment;

3 ~~[T-]~~ U. "person" means any individual, group of  
4 individuals, corporation, association, cooperative or other  
5 entity;

6 ~~[U-]~~ V. "processing" means cooking, baking,  
7 heating, drying, mixing, churning, separating, extracting,  
8 cutting, fermenting, eviscerating, preserving, dehydrating,  
9 freezing or otherwise manufacturing food articles and includes  
10 packaging, canning, jarring or otherwise enclosing such food  
11 articles in a container;

12 ~~[V-]~~ W. "producer" means a person who engages in  
13 the business of growing or producing organically produced  
14 agricultural commodities; and

15 ~~[W-]~~ X. "steward" means an individual appointed by  
16 the commission to oversee the verification component of the  
17 certification program."

18 Section 2. Section 76-22-7 NMSA 1978 (being Laws 1990,  
19 Chapter 122, Section 7, as amended) is amended to read:

20 "76-22-7. ORGANIC COMMODITY COMMISSION-- DUTIES. -- The  
21 commi ssi on:

22 A. shall adopt and promulgate certification  
23 standards for the production and handling of organically  
24 produced food articles in the state. The certification  
25 standards shall include agricultural commodities used but not

. 136590. 1

underscored material = new  
[bracketed material] = delete

1 consumed as foods by humans and animals. The standards shall  
2 be compiled in a certification handbook to be included in the  
3 annual report to the legislature;

4 B. shall conduct studies to increase commercial  
5 value of and discover new markets for organically produced  
6 food articles;

7 C. shall disseminate reliable information relative  
8 to market conditions, current prices and sources of supply and  
9 demand for organically produced food articles;

10 D. may sue and be sued as a commission, without  
11 individual liability for acts of the commission within the  
12 scope of the powers conferred [~~under~~] by the Organic Commodity  
13 Act;

14 E. may enter into contracts;

15 F. may appoint subordinate officers and employees  
16 of the commission, prescribe their duties and fix their  
17 compensation;

18 G. shall cooperate with local, state or national  
19 organizations or government agencies engaged in activities  
20 similar to that of the commission;

21 H. shall adopt, rescind, modify or amend  
22 regulations, orders and resolutions for the exercise of its  
23 powers and duties after providing public notice and the  
24 opportunity for public comment on the action; [~~and~~]

25 I. shall adopt the federal materials list upon its

. 136590. 1

underscored material = new  
[bracketed material] = delete

1 promulgation and shall prepare a registration program for all  
2 purveyors of these materials and an assessment schedule for  
3 the purveyors of the class of materials appearing on that  
4 list; and

5 J. is designated as the "state organic program"  
6 pursuant to the United States department of agriculture's  
7 national organic program and, in that capacity, may:

8 (1) regulate all aspects of the organic  
9 agriculture marketplace in New Mexico;

10 (2) take all actions necessary to ensure that  
11 all agricultural products in New Mexico that are labeled or  
12 represented as "certified organic", "organic" or "made with  
13 organic ingredients" have been produced under a valid  
14 certification issued by a certifying agent; and

15 (3) assume investigative and enforcement  
16 responsibilities relating to such labeled agricultural  
17 products, including products certified by a certifying agent  
18 other than the commission and labeled products not certified. "

19 Section 3. Section 76-22-26 NMSA 1978 (being Laws 1990,  
20 Chapter 122, Section 26, as amended) is amended to read:

21 "76-22-26. LABELING. --

22 A. The commission shall establish a label to be  
23 affixed to agricultural products that have been produced on  
24 organically certified farms and have been handled by  
25 organically certified handlers.

. 136590. 1

underscored material = new  
[bracketed material] = delete

1           B. The label shall state that a food article has  
2 been organically produced and shall bear the seal of the  
3 commi ssi on.

4           C. Except as otherwise provided in the Organic  
5 Commodity Act, the terms "organic", "organically produced",  
6 "certified organic", "certified organically grown", "natural",  
7 "naturally grown", "pesticide-residue free" or derivatives of  
8 these terms shall not be used by any person for advertising,  
9 labeling or otherwise affixing the terms to a food article or  
10 its container, unless the food article has been produced and  
11 marketed in compliance with the provisions of the Organic  
12 Commodity Act and [~~the certificate standards promulgated under~~  
13 ~~that act~~] certified by a certifying agent.

14           D. The commission shall have the exclusive  
15 authority under the state certification program to approve the  
16 affixing of labels to food articles. "

17           Section 4. Section 76-22-27 NMSA 1978 (being Laws 1990,  
18 Chapter 122, Section 27, as amended) is amended to read:

19           "76-22-27. VIOLATIONS AND ENFORCING AUTHORITY-- CIVIL  
20 PENALTY. --

21           A. In addition to a civil penalty that may be  
22 enforced pursuant to Subsection D of this section, any  
23 producer or handler of organically produced food articles who  
24 issues a false certification, attempts to have an organically  
25 produced label affixed to a food article that the producer or

. 136590. 1



underscored material = new  
[bracketed material] = delete

1 handler knows, or should have known, to have been produced in  
2 a manner that is not in compliance with the Organic Commodity  
3 Act or otherwise violates the purposes of the certification  
4 program [~~under that act~~], as determined by the commission,  
5 shall be subject to the following procedures and penalties:

6 (1) the commission shall cause notice of the  
7 violations to be given to the producer or handler having  
8 responsibility for the violation in the form of a complaint;  
9 any person so notified shall be given an opportunity to be  
10 heard under the rules prescribed by the commission. If the  
11 commission finds no violation has occurred, it shall dismiss  
12 the complaint and notify the parties to the complaint;

13 (2) if at the conclusion of the hearing the  
14 commission finds that a violation has occurred, either in the  
15 presence or absence of the person notified, it shall enter  
16 findings to that effect and notify the parties to the  
17 complaint. If such a finding is made, the person shall not be  
18 eligible to receive certification [~~under the Organic Commodity~~  
19 ~~Act~~] for a period of five years with respect to any farm or  
20 handling operation in which the producer has an interest; and

21 (3) notwithstanding Paragraph (2) of this  
22 subsection, the commission may reduce or eliminate the period  
23 of ineligibility if the commission determines that  
24 modification or waiver would be in the best interest of the  
25 certification program [~~established under the Organic Commodity~~

underscored material = new  
[bracketed material] = delete

1 Act].

2 B. No person shall be subject to the penalties and  
3 procedures described in Subsection A of this section for  
4 having violated the provisions of the Organic Commodity Act or  
5 the standards contained in the certification handbook if he  
6 possesses a guaranty that states that the food article is  
7 labeled in compliance with the Organic Commodity Act and the  
8 standards contained in the certification handbook.

9 C. The commission may apply for, and the court may  
10 grant, a temporary or permanent injunction restraining any  
11 person from violating or continuing to violate any of the  
12 provisions of the Organic Commodity Act or any certification  
13 standard adopted and promulgated under that act,  
14 notwithstanding the existence of other remedies at law. The  
15 injunction shall be issued without bond.

16 D. Any person who, except in accordance with the  
17 provisions of the Organic Commodity Act and rules adopted  
18 pursuant to that act, knowingly represents, labels or sells a  
19 product as "certified organic", "organic", "made with organic  
20 ingredients" or similar language intended to convey the  
21 impression that the product is organically produced is subject  
22 to a civil penalty of not more than five thousand dollars  
23 (\$5,000) for each violation. Any penalties collected pursuant  
24 to this subsection shall be deposited in the organic market  
25 development fund."

. 136590. 1

