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SENATE BILL 777

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

INTRODUCED BY

Michael S. Sanchez

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,**

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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;

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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;

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1 ~~[N-]~~ 0. "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

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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

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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

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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.

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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

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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~~

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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."

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