

CHAPTER 285

AGRICULTURE

HOUSE BILL 02-1186

BY REPRESENTATIVE(S) Plant, Hodge, Johnson, Snook, Alexander, Jameson, Tochtrop, Coleman, Daniel, Grossman, Jahn, Madden, Rippy, Romanoff, Scott, Smith, Stafford, Stengel, Tapia, Veiga, Weddig, and Williams S.; also SENATOR(S) Isgar, Entz, Evans, Fitz-Gerald, Hanna, Hernandez, Matsunaka, Owen, Pascoe, Taylor, Teck, and Tupa.

AN ACT

CONCERNING THE STATE CERTIFICATION OF ORGANIC PRODUCERS PURSUANT TO THE FEDERAL "ORGANIC FOODS PRODUCTION ACT OF 1990", AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative intent. The general assembly intends for organic certification to be self-funded through certification fees imposed in order to obtain such certification, and the general assembly further intends that organic certification not be funded though an appropriation from the general fund.

SECTION 2. Repeal. 35-11.5-103 (4), (5), (6), and (7), Colorado Revised Statutes, are repealed as follows:

35-11.5-103. Definitions. As used in this article, unless the context otherwise requires:

~~(4) "Organically grown products" means agricultural products grown or produced in Colorado without the use of synthetic pesticides, synthetically compounded fertilizers, or synthetic growth hormones, and certified by the department as complying with all standards and regulations established by this article.~~

~~(5) "Organic certification seal" or "seal" means the design approved by the commissioner which, when imprinted or affixed in any manner on labels, packages, or products shall signify that all of the standards and regulations adopted by the commissioner, and all other conditions of this article, have been met.~~

~~(6) "Organic label" means any label other than the organic certification seal, which signifies to a consumer that the labelled product was organically grown.~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(7) ~~"Organic producer" means any person licensed under this article to produce organically grown products for market on a farm certified by the department.~~

SECTION 3. 35-11.5-103, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

35-11.5-103. Definitions. (8) "SECRETARY" MEANS THE UNITED STATES SECRETARY OF AGRICULTURE OR A REPRESENTATIVE TO WHOM AUTHORITY HAS BEEN DELEGATED TO ACT IN THE SECRETARY'S STEAD.

(9) "STATE ORGANIC CERTIFICATION PROGRAM" OR "STATE CERTIFICATION" MEANS THE PROGRAM THAT IMPLEMENTS 7 U.S.C. SEC. 6501 ET SEQ. AND 7 CFR PART 205 IN COLORADO IN ORDER THAT THE STATE CERTIFY ORGANIC PRODUCERS PURSUANT TO 7 U.S.C. SEC. 6507.

SECTION 4. The introductory portion to 35-11.5-104 (1) and 35-11.5-104 (1) (a), Colorado Revised Statutes, are amended, and the said 35-11.5-104 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

35-11.5-104. Rules. (1) To carry out the provisions of this article, the commissioner ~~is authorized to~~ SHALL adopt appropriate rules pursuant to section 24-4-103, C.R.S., ~~including, but not limited to,~~ CONCERNING the following:

(a) Fees to fund all direct and indirect costs of the administration and ~~enforcement~~ IMPLEMENTATION of this article;

(j) THE PROVISIONS OF 7 U.S.C. SEC. 6501 ET SEQ. AND 7 CFR PART 205, APPLICABLE TO THE CERTIFICATION OF ORGANIC PRODUCERS;

(k) CONFIDENTIALITY OF INFORMATION AND DOCUMENTS PURSUANT TO SECTION 35-11.5-105 (4).

SECTION 5. Repeal. 35-11.5-104 (1) (b), (1) (c), (1) (d), (1) (e), (1) (f), (1) (g), (1) (h), and (1) (i), Colorado Revised Statutes, are repealed as follows:

35-11.5-104. Rules. (1) To carry out the provisions of this article, the commissioner is authorized to adopt appropriate rules pursuant to section 24-4-103, C.R.S., including, but not limited to, the following:

(b) ~~Standards for agricultural products offered for sale as organically grown products;~~

(c) ~~Standards for licensing of organic producers;~~

(d) ~~The number and type of on-site inspections;~~

(e) ~~Standards for chemical residue analysis of organic products and fees for conducting such analysis;~~

- (f) ~~The certification of private laboratories to conduct chemical residue analyses;~~
- (g) ~~The development, distribution, and use of the organic certification seal on organically grown products;~~
- (h) ~~Standards for the use of any other organic labels on agricultural products sold within the state;~~
- (i) ~~Evaluation and registration of products approved by the department for use in the growth of any one or more organically grown products.~~

SECTION 6. 35-11.5-105, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

35-11.5-105. Delegation of duties - cooperative agreements - confidentially.

(3) THE DEPARTMENT AND THE COMMISSIONER SHALL COORDINATE WITH THE SECRETARY TO IMPLEMENT THE STATE ORGANIC CERTIFICATION PROGRAM PURSUANT TO THIS ARTICLE.

(4) THE COMMISSIONER AND THE COMMISSIONER'S AUTHORIZED REPRESENTATIVE SHALL MAINTAIN STRICT CLIENT CONFIDENTIALITY UNDER THE ORGANIC CERTIFICATION PROGRAM AND SHALL NOT DISCLOSE TO THIRD PARTIES ANY BUSINESS-RELATED INFORMATION CONCERNING ANY CLIENT OBTAINED WHILE IMPLEMENTING THIS ARTICLE; EXCEPT THAT THE SECRETARY SHALL HAVE ACCESS TO SUCH INFORMATION AND THE FOLLOWING INFORMATION SHALL BE MADE AVAILABLE TO THE PUBLIC:

(a) CERTIFICATES ISSUED DURING THE CURRENT CALENDAR YEAR AND THE THREE IMMEDIATELY PRECEDING CALENDAR YEARS;

(b) A LIST OF PRODUCERS AND HANDLERS WHOSE OPERATIONS HAVE BEEN CERTIFIED DURING THE CURRENT CALENDAR YEAR AND THE THREE IMMEDIATELY PRECEDING CALENDAR YEARS, INCLUDING FOR EACH THE NAME OF THE OPERATION, TYPE OF OPERATION, PRODUCTS PRODUCED, AND THE EFFECTIVE DATE OF THE CERTIFICATION;

(c) THE RESULTS OF LABORATORY ANALYSES FOR RESIDUES OF PESTICIDES AND OTHER PROHIBITED SUBSTANCES CONDUCTED DURING THE CURRENT CALENDAR YEAR AND THE THREE IMMEDIATELY PRECEDING CALENDAR YEARS; AND

(d) OTHER BUSINESS INFORMATION AS PERMITTED IN WRITING BY THE PRODUCER OR HANDLER.

SECTION 7. Repeal. 35-11.5-106, Colorado Revised Statutes, is repealed as follows:

~~**35-11.5-106. Organic producer certification required.** Any person desiring to certify a farm and utilize the organic certification seal under the provisions of this article must secure an organic producer license from the commissioner in accordance with this article and any rules promulgated pursuant to this article. Such organic producer licenses shall expire on December 31 of each year.~~

SECTION 8. Repeal. 35-11.5-107, Colorado Revised Statutes, is repealed as follows:

35-11.5-107. Organic producer certification - application - fees. ~~(1) Each person seeking to be licensed as an organic producer shall make application to the commissioner on forms prescribed and furnished by the commissioner.~~

~~(2) An annual license fee, not to exceed two hundred fifty dollars, shall accompany the application.~~

SECTION 9. Repeal. 35-11.5-108, Colorado Revised Statutes, is repealed as follows:

35-11.5-108. Renewal. ~~(1) Application for renewal of an organic producer license shall be on a form provided by the commissioner and must be postmarked on or before November 30 of each year to renew the license for the following year without penalty. The application shall be accompanied by the annual license fee.~~

~~(2) If the application for renewal of an organic producer license is not postmarked on or before November 30, a penalty fee of one-fourth of the annual license fee shall be assessed and added to the fee and shall be paid by the applicant before the renewal license shall be issued.~~

~~(3) If the application for renewal of an organic producer license is not postmarked on or before the first working day of January for the year of renewal, a penalty fee of one-half of the annual license fee shall be assessed and added to the fee and shall be paid by the applicant before the renewal license shall be issued.~~

~~(4) If either the application or the fee for renewal of an organic producer license is not postmarked by February 1 of the renewal year, the license shall expire. An expired license may be renewed within two years after expiration upon payment of all fees in arrears and satisfaction of the rules and regulations adopted pursuant to this article.~~

SECTION 10. Repeal. 35-11.5-109, Colorado Revised Statutes, is repealed as follows:

35-11.5-109. Prohibited acts. ~~(1) It shall be unlawful for any unlicensed person to reproduce, produce a facsimile of, or utilize the organic certification seal in any fashion. Any person who violates this subsection (1) may be subject to appropriate civil or administrative proceedings or both.~~

~~(2) It shall be unlawful for any person to utilize any organic label if that person fails to comply with any standard promulgated for the use of such label pursuant to section 35-11.5-104 (1) (h). Any person who violates this subsection (2) may be subject to appropriate civil or administrative proceedings or both.~~

SECTION 11. Repeal. 35-11.5-110, Colorado Revised Statutes, is repealed as follows:

35-11.5-110. Administration and enforcement. ~~(1) The commissioner is~~

authorized to administer and enforce the provisions of this article:

~~(2) The commissioner, upon his own motion or upon the complaint of any person, may make any and all investigations necessary to insure compliance with this article.~~

~~(3) (a) For the purpose of carrying out the provisions of this article, the commissioner shall have access at any reasonable time during regular business hours, upon consent, or upon complying with the provisions of paragraph (b) of this subsection (3):~~

~~(I) To all land, buildings, yards, warehouses, and storage facilities in which any products to be offered for sale as organically grown products or organically labelled products are grown, kept, stored, handled, processed, or transported; and~~

~~(II) To all records required to be kept for any reasonable period of time and to make copies of such records:~~

~~(b) The commissioner shall have access at any reasonable time during regular business hours to the properties and records specified in subparagraphs (I) and (II) of paragraph (a) of this subsection (3) when he has substantial justification to believe that any person who is not certified under this article is using either the organic certification seal or any other organic label in violation of this article or any rules or regulations adopted pursuant thereto.~~

~~(4) If the commissioner determines that there exists a violation of any provision of this article, or any rule made pursuant to this article, the commissioner may issue a cease and desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the specific actions that the person is required to cease forthwith. At any time after the date of the service of the order to cease and desist, the person may request a hearing on the question of whether to dissolve the order. Such hearing shall be held not later than ten days after such request and shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.~~

~~(5) In the event that any person fails to comply with a cease and desist order within twenty-four hours, the commissioner may request the attorney general to bring a suit for a temporary restraining order and injunctive relief to prevent any further or continued violation of such order. Under no circumstances shall the court require the commissioner to post a bond.~~

~~(6) No stay of a cease and desist order shall be issued by the court before a hearing thereon involving both parties.~~

SECTION 12. Repeal. 35-11.5-111, Colorado Revised Statutes, is repealed as follows:

35-11.5-111. Denial - suspension - revocation. ~~(1) The commissioner, pursuant to the provisions of article 4 of title 24, C.R.S., may deny, suspend, or revoke any organic producer license if a person:~~

~~(a) Has been adjudged to have violated any provision of this article or rules promulgated pursuant to this article;~~

~~(b) Has been convicted of a felony directly or indirectly related to conduct regulated by this article;~~

~~(c) Has used fraud, deception, or misrepresentation in a license application or in the procurement of or use of an organic producer license;~~

~~(d) Has failed to comply with a lawful order of the commissioner or court; or~~

~~(e) Has had a comparable certification or license revoked or suspended by any authority.~~

SECTION 13. Repeal. 35-11.5-112, Colorado Revised Statutes, is repealed as follows:

~~**35-11.5-112. Civil penalties.** (1) Any person who violates any provision of this article or any regulation made pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.~~

~~(2) Before imposing any civil penalty, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.~~

~~(3) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to section 24-4-105, C.R.S.~~

~~(4) If the commissioner is unable to collect such civil penalty or if any person fails to pay all or a portion of such penalty, the commissioner may recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.~~

~~(5) Any action of the commissioner with reference to the administration of this article may be reviewed by any court of competent jurisdiction pursuant to the provision of section 24-4-106, C.R.S., only after all administrative remedies have been exhausted. If an aggrieved person brings an action to review the imposition of a civil penalty by the commissioner pursuant to subsection (1) of this section, the trier of fact shall have the authority to assess costs and attorney fees against the department if the trier of fact determines that the commissioner lacked substantial justification to charge the aggrieved person and impose the civil penalty.~~

SECTION 14. 35-11.5-113, Colorado Revised Statutes, is amended to read:

35-11.5-113. Organic certification fund created. (1) All fees and penalties collected pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the organic certification fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the direct and indirect costs of the administration of this article. ~~The amount of indirect costs assessed under section 35-11.5-104 (1) (a) shall be based on the number of FTE authorized in the annual general appropriation act for the administration of this article expressed as a percentage of the number of FTE in~~

~~the department. In no case shall the indirect costs assessed exceed this percentage.~~

(2) All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. The moneys in the fund shall not be transferred or credited to the general fund or to any other fund except as directed by the general assembly acting by bill. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

SECTION 15. Article 11.5 of title 35, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

35-11.5-116. Accreditation. THE COMMISSIONER SHALL SEEK ACCREDITATION FROM THE SECRETARY AND SHALL CREATE AND SUBMIT A PLAN FOR THE ESTABLISHMENT OF A STATE ORGANIC CERTIFICATION PROGRAM TO THE SECRETARY FOR APPROVAL PURSUANT TO 7 U.S.C. SEC. 6507.

35-11.5-117. Conflict with federal law. IF THE SECRETARY OR A COURT OF COMPETENT JURISDICTION DETERMINES THAT THERE IS A CONFLICT BETWEEN THIS ARTICLE AND ANY PROVISIONS OF THE FEDERAL "ORGANIC FOODS PRODUCTION ACT OF 1990", 7 U.S.C. SEC. 6501 ET SEQ. OR 7 CFR PART 205, THE PROVISIONS OF THE FEDERAL ACT AND RULES SHALL CONTROL, AND THE COMMISSIONER SHALL PERFORM THE DUTIES AND DISCHARGE THE OBLIGATIONS CONTAINED IN THE FEDERAL ACT. IF SUCH A DETERMINATION IS MADE, THE COMMISSIONER SHALL SUBMIT A REPORT TO THE GENERAL ASSEMBLY EXPLAINING THE CONFLICT.

SECTION 16. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the organic certification fund created in section 35-11.5-113 (1), Colorado Revised Statutes, not otherwise appropriated, to the department of agriculture, for the fiscal year beginning July 1, 2002, the sum of one hundred eighteen thousand nine hundred fifty-one dollars (\$118,951) and 2.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2002, the sum of ten thousand five hundred seventeen dollars (\$10,517), or so much thereof as may be necessary, for the implementation of this act. Such sum shall be from cash funds exempt received from the department of agriculture out of the appropriation made in subsection (1) of this section.

SECTION 17. Effective date. Sections 2, 5, 7, 8, 9, 10, 11, 12, and 13 of this act shall take effect upon the accreditation by the secretary of the United States department of agriculture of the state organic certification program, and the remainder of this act shall take effect upon passage.

SECTION 18. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 3, 2002