

Senate Study Bill 2137

Bill Text

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1 1 SUBCHAPTER 1
1 2 DEFINITIONS
1 3 Section 1. NEW SECTION. 190C.1 DEFINITIONS.
1 4 For purposes of this chapter, unless the context otherwise
1 5 requires:
1 6 1. "Advertise" means to present a commercial message in
1 7 any medium, including but not limited to print, radio,
1 8 television, sign, display, label, tag, or articulation.
1 9 2. "Agricultural commodity" includes but is not limited to
1 10 livestock, crops, or food, such as vegetables, nuts, seeds,
1 11 honey, eggs, or milk existing in an unprocessed state, which
1 12 is produced on a farm and marketed in the United States for
1 13 human or livestock consumption.
1 14 3. "Agricultural product" means an agricultural commodity
1 15 or an agricultural processed product.
1 16 4. "Agricultural processed product" means an agricultural
1 17 commodity that has been processed.
1 18 5. "Board" means the organic standards review and appeals
1 19 board established in section 190C.2.
1 20 6. "Claim of genuineness" means a claim made in an
1 21 advertisement that refers to an agricultural product as
1 22 "organic", "organically produced", "certified organic",
1 23 "certified organically grown", or a derivative of any of these
1 24 terms.
1 25 7. "Department" means the department of agriculture and
1 26 land stewardship.
1 27 8. "Farm" means a site where the agricultural commodities
1 28 are produced.
1 29 9. "Food" means an agricultural product or an agricultural
1 30 product ingredient which is used or intended for use in whole
1 31 or in part for human consumption.
1 32 10. "Handler" means a person engaged in the business of
1 33 handling agricultural products, including but not limited to
1 34 distributors, wholesalers, brokers, and repackers. "Handler"
1 35 does not include a person selling agricultural products to
2 1 consumers on a retail basis, including a food service
2 2 establishment as defined in section 137B.2, retail grocery,
2 3 meat market, or bakery, if the person does not process the
2 4 agricultural product.
2 5 11. "Label" means a commercial message in a printed medium
2 6 which is affixed by any method to a product or to a receptacle
2 7 including a container or package.
2 8 12. "Livestock" means an animal belonging to the bovine,
2 9 caprine, equine, ovine, or porcine species; ostriches, rheas,
2 10 or emus; farm deer as defined in section 481A.1; or poultry.
2 11 13. "Organic agricultural product" means food that is one
2 12 of the following:
2 13 a. If the food is an agricultural commodity, it is
2 14 produced and handled according to the requirements of this
2 15 chapter, including the requirements provided pursuant to
2 16 section 190C.11 by a person who is certified pursuant to
2 17 section 190C.13 or registered as required pursuant to section
2 18 190C.14.
2 19 b. If the food is an agricultural processed product, it is
2 20 produced, handled, and processed according to the requirements
2 21 of this chapter, including the requirements provided pursuant

2 22 to section 190C.11 by a person who is certified pursuant to
2 23 section 190C.13 or registered pursuant to section 190C.14.
2 24 14. "Processing" means turning an agricultural commodity
2 25 into an agricultural processed product by physical or chemical
2 26 modification, including but not limited to canning, freezing,
2 27 drying, dehydrating, cooking, pressing, powdering, packaging,
2 28 repacking, baking, heating, mixing, grinding, churning,
2 29 separating, extracting, cutting, fermenting, eviscerating,
2 30 preserving, jarring, brewing, or slaughtering.

2 31 15. "Produce" means to grow, raise, collect, or harvest an
2 32 agricultural commodity.

2 33 16. "Producer" means a person who produces an agricultural
2 34 commodity.

2 35 17. "Processor" means a person who processes an
3 1 agricultural commodity.

3 2 18. "Retailer" means a person, other than an operator of a
3 3 food service establishment, who is engaged in the business of
3 4 selling food at retail to the ultimate customer.

3 5 19. "Sale" or "sell" means a commercial transfer or offer
3 6 for sale and distribution in any manner.

3 7 SUBCHAPTER 2

3 8 ADMINISTRATION

3 9 Sec. 2. NEW SECTION. 190C.2 ORGANIC STANDARDS REVIEW AND
3 10 APPEALS BOARD.

3 11 1. A certification standards and appeals board is
3 12 established within the department. The powers of the board
3 13 are vested in and shall be exercised by eleven members
3 14 appointed by the governor. The governor shall accept
3 15 nominations from organizations representing persons who serve
3 16 on the board, as determined by the governor.

3 17 2. The members shall serve staggered terms of four years
3 18 beginning and ending as provided in section 69.19. However,
3 19 the governor shall appoint initial members to serve for less
3 20 than four years to ensure members serve staggered terms.

3 21 Members appointed by the governor shall be persons
3 22 knowledgeable regarding the production, handling, processing,
3 23 and retailing of organic agricultural products. The governor
3 24 shall appoint all of the following:

3 25 a. Five persons who operate farms producing organic
3 26 agricultural products. At least one of the persons must be a
3 27 producer of livestock, who may be a dairy or egg producer. At
3 28 least one person shall be a producer of an agricultural
3 29 commodity other than livestock. To qualify for appointment, a
3 30 person must have derived a substantial portion of the person's
3 31 income, wages, or salary from the production of organic
3 32 agricultural products for three years prior to appointment.

3 33 b. Two persons who operate businesses processing organic
3 34 agricultural products. To qualify for appointment, a person
3 35 must have derived a substantial portion of the person's
4 1 income, wages, or salary from processing organic agricultural
4 2 products for three years prior to appointment.

4 3 c. One of the following:

4 4 (1) A person who operates a business handling organic
4 5 agricultural products. To qualify for appointment, a person
4 6 must have derived a substantial portion of the person's
4 7 income, wages, or salary from handling organic agricultural
4 8 products for three years prior to appointment.

4 9 (2) A person who operates a business selling organic
4 10 agricultural products. To qualify for appointment, a person
4 11 must have derived a substantial portion of the person's
4 12 income, wages, or salary from selling organic agricultural
4 13 products on a retail basis for three years prior to
4 14 appointment.

4 15 d. Two persons who have an educational degree and
4 16 experience in agricultural or food science. To qualify for
4 17 appointment, a person must not have a financial interest in
4 18 the production, handling, processing, or selling of organic

4 19 agricultural products.

4 20 e. One person who represents the public interest, the
4 21 natural environment, or consumers. To qualify for
4 22 appointment, the person must be a member of an organization
4 23 representing the public interest, consumers, or the natural
4 24 environment. The person must not have a financial interest in
4 25 the production, handling, processing, or selling of organic
4 26 agricultural products.

4 27 3. A vacancy on the board shall be filled in the same
4 28 manner as an original appointment. A person appointed to fill
4 29 a vacancy shall serve only for the unexpired portion of the
4 30 term. A member is eligible for reappointment. A member may
4 31 be removed from office by the governor for misfeasance,
4 32 malfeasance, or willful neglect of duty or other just cause,
4 33 after notice and hearing, unless the notice and hearing is
4 34 expressly waived in writing.

4 35 4. Six members of the board constitute a quorum and the
5 1 affirmative vote of a majority of the members present is
5 2 necessary for any substantive action to be taken by the board.
5 3 The majority shall not include any member who has a conflict
5 4 of interest and a statement by a member that the member has a
5 5 conflict of interest is conclusive for this purpose. A
5 6 vacancy in the membership does not impair the right of a
5 7 quorum to exercise all rights and perform all duties of the
5 8 board.

5 9 5. The members are entitled to receive a per diem as
5 10 specified in section 7E.6 for each day spent in performance of
5 11 duties as members, and shall be reimbursed for all actual and
5 12 necessary expenses incurred in the performance of duties as
5 13 members.

5 14 6. If a member has a interest, either direct or indirect,
5 15 in a contract to which the board is or is to be a party, the
5 16 member shall disclose the interest to the board in writing.
5 17 The writing stating the conflict shall be set forth in the
5 18 minutes of the board. The member having the interest shall
5 19 not participate in any action by the board relating to the
5 20 contract.

5 21 7. The board shall meet on a regular basis and at the call
5 22 of the chairperson or upon the written request to the
5 23 chairperson of two or more members. The department shall
5 24 provide administrative support to the board.

5 25 Sec. 3. NEW SECTION. 190C.3 BOARD POWERS AND DUTIES.

5 26 The organic standards review and appeals board shall have
5 27 powers and duties to do all of the following:

5 28 1. Monitor conditions, practices, policies, programs, and
5 29 procedures affecting the production, handling, processing, and
5 30 sale of organic agricultural products.

5 31 2. Compile materials or a list of materials which may
5 32 assist producers, handlers, processors, and sellers of organic
5 33 agricultural products, in complying with this chapter.

5 34 3. Assist the department in the development and
5 35 interpretation of requirements of this chapter, including
6 1 requirements established pursuant to section 190C.11 and
6 2 standards regarding the production, processing, handling, and
6 3 selling of organic agricultural products and other matters of
6 4 concern to the producers, handlers, processors, and retailers
6 5 of organic agricultural products.

6 6 4. Provide recommendations to the department regarding the
6 7 administration and enforcement of this chapter, including
6 8 rules adopted by the department pursuant to this chapter.

6 9 5. Hear appeals of contested cases involving disciplinary
6 10 action brought by the department against a person pursuant to
6 11 section 190C.23. The board may approve, disapprove, or modify
6 12 a departmental decision, including a decision proposed by an
6 13 administrative law judge under chapter 17A. The board's
6 14 decision shall be final agency action as provided in chapter
6 15 17A.

6 16 Sec. 4. NEW SECTION. 190C.4 ADMINISTRATIVE AUTHORITY.

6 17 1. The department shall adopt all rules necessary to
6 18 administer this chapter.

6 19 a. The rules may include regulations governing the
6 20 production, handling, processing, and selling of agricultural
6 21 products by persons advertising a claim of genuineness. These
6 22 rules may provide for standards, certification, registration,
6 23 inspections, testing, the assessment and collection of fees,
6 24 the maintenance of records, disciplinary action, and the
6 25 issuance of stop sale orders as provided in this chapter.

6 26 b. The rules adopted under this section shall be
6 27 consistent with federal regulations adopted pursuant to the
6 28 federal Organic Food Production Act of 1990. The department
6 29 may adopt rules which are stricter than federal regulations to
6 30 the extent allowed by federal law.

6 31 2. The department may appoint or contract with qualified
6 32 persons to serve as certifying agencies on behalf of the
6 33 department. A certifying agency shall certify persons as
6 34 provided by section 190C.13 and inspect the operations of
6 35 persons who are certified as provided in section 190C.22,
7 1 according to rules adopted by the department.

7 2 3. A violation of this chapter includes a violation of any
7 3 rule adopted or issue ordered pursuant to this chapter as
7 4 provided in this chapter and under chapter 17A.

7 5 Sec. 5. NEW SECTION. 190C.5 FEES AND APPROPRIATION.

7 6 The department shall establish a schedule of fees required
7 7 for certification as provided in section 190C.13 and
7 8 registration as provided in section 190C.14.

7 9 1. Beginning in the fiscal year that starts on July 1,
7 10 2000, the amount of the fees shall be based on the amount of
7 11 revenues required by the department to administer and enforce
7 12 this chapter. However, a person required to be certified or
7 13 registered as a producer, handler, processor, or retailer
7 14 shall not pay more than one hundred dollars for each year that
7 15 the person is certified or registered.

7 16 2. The fees shall be deposited into the general fund of
7 17 the state.

7 18 SUBCHAPTER 3
7 19 REQUIREMENTS

7 20 Sec. 6. NEW SECTION. 190C.11 REQUIREMENTS APPLICABLE TO
7 21 ORGANIC AGRICULTURAL PRODUCTS.

7 22 1. Only the following persons may make a claim of
7 23 genuineness regarding an agricultural product sold in this
7 24 state:

7 25 a. A person certified by the department pursuant to
7 26 section 190C.13.

7 27 b. A person registered with the department pursuant to
7 28 section 190C.14.

7 29 2. In advertising a product produced, handled, or
7 30 processed for sale in this state, the following shall apply:

7 31 a. If the agricultural product was produced, handled, or
7 32 processed in this state a person shall not make a claim of
7 33 genuineness, unless the following applies:

7 34 (1) An agricultural commodity must be produced and handled
7 35 in accordance with the provisions of section 190C.13.

8 1 (2) An agricultural processed product and each
8 2 agricultural commodity that is part of the agricultural
8 3 processed product must comply with the provisions of
8 4 subparagraph (1) and the agricultural processed product must
8 5 be processed or handled in accordance with the provisions of
8 6 section 190C.13.

8 7 b. If the agricultural product was not produced, handled,
8 8 or processed in this state, a person shall not make a claim of
8 9 genuineness, unless the following applies:

8 10 (1) An agricultural commodity must be produced and handled
8 11 in accordance with the provisions of the state or nation where
8 12 the agricultural product is produced and handled, and the

8 13 department must find that those provisions are at least as
8 14 stringent as those required in this chapter.

8 15 (2) An agricultural processed product and each
8 16 agricultural commodity that is part of the agricultural
8 17 processed product must comply with the provisions of
8 18 subparagraph (1), the agricultural processed product must be
8 19 processed and handled in accordance with the provisions of the
8 20 state or nation where the agricultural processed product is
8 21 processed and handled, and the department must find that those
8 22 provisions are at least as stringent as those required in this
8 23 chapter.

8 24 Sec. 7. NEW SECTION. 190C.12 STANDARDS.

8 25 A person shall not sell an agricultural commodity by making
8 26 a claim of genuineness, unless the agricultural commodity is
8 27 produced, handled, and processed in accordance with standards
8 28 established by rules adopted by the department as provided in
8 29 this chapter. An agricultural product must be produced,
8 30 handled, and processed in a manner that maintains the
8 31 integrity of the agricultural product until it is sold to the
8 32 consumer. The integrity of the agricultural product shall be
8 33 maintained without the use of synthetic additives or
8 34 materials. The rules shall provide for the production,
8 35 handling, and processing of organic agricultural products by
9 1 using cultural, biological, and mechanical methods.

9 2 Sec. 8. NEW SECTION. 190C.13 CERTIFICATION.

9 3 1. The department shall establish and administer a program
9 4 to certify producers, handlers, and processors of agricultural
9 5 products who make a claim of genuineness about the production,
9 6 handling, and processing of agricultural products which are
9 7 sold in this state.

9 8 a. A certification shall expire one year from the date of
9 9 issuance.

9 10 b. In order to be certified, a producer, handler, or
9 11 processor must submit to the department an organic plan as
9 12 prescribed by rules adopted by the department. The plan shall
9 13 include methods used to ensure that the agricultural products
9 14 are produced, handled, and processed according to requirements
9 15 established by the department pursuant to section 190C.11.
9 16 However, this section shall not require that any of the
9 17 following persons be certified:

9 18 (1) A retailer to the extent that the retailer sells food
9 19 unsealed, unpacked, repacked, or nonrepackaged.

9 20 (2) A person who receives five thousand dollars or less in
9 21 gross income from the sale of agricultural products.

9 22 Any person exempted from certification under this
9 23 subsection, who makes a claim of genuineness, register
9 24 pursuant to section 190C.14.

9 25 2. The department shall adopt rules establishing a
9 26 certification procedure. The procedure shall provide that a
9 27 decision to certify an applicant must be made by more than one
9 28 person authorized by the department.

9 29 Sec. 9. NEW SECTION. 190C.14 REGISTRATION.

9 30 The department shall establish and administer a program to
9 31 register producers, handlers, processors, and retailers of
9 32 agricultural products who make a claim of genuineness about
9 33 the production, handling, or processing of an agricultural
9 34 product. A registration shall expire one year from the date
9 35 of issuance. A person is not required to be registered
10 1 pursuant to this section, if the person is certified pursuant
10 2 to section 190C.13. The department shall adopt rules
10 3 establishing registration procedures.

10 4 Sec. 10. NEW SECTION. 190C.15 LABELING AND ORGANIC
10 5 CERTIFICATION SEAL.

10 6 1. A label advertising a claim of genuineness regarding an
10 7 agricultural product sold in this state shall conform with the
10 8 requirements of this chapter including requirements
10 9 established in rules adopted by the department pursuant to

10 10 section 190C.11. The department shall adopt rules specifying
10 11 the content of the label.

10 12 2. The department may establish a seal certifying that a
10 13 claim of genuineness is valid, or that an agricultural product
10 14 has been produced, handled, and processed in accordance with
10 15 this chapter. A person shall not use a seal provided in this
10 16 section to advertise an agricultural product, unless the
10 17 person is authorized to use the seal by the department in
10 18 accordance with requirements established by the department
10 19 pursuant to rules adopted under chapter 17A. The seal may be
10 20 used in addition to or in lieu of a label provided in
10 21 subsection 1, as provided by the department.

10 22 Sec. 11. NEW SECTION. 190C.16 RECORDS.

10 23 A person required to be certified as provided in section
10 24 190C.13 shall maintain records regarding the production,
10 25 processing, and handling of an organic agricultural product.
10 26 The records shall demonstrate that agricultural products
10 27 subject to a claim of genuineness have been produced,
10 28 processed, and handled in conformance with this chapter. A
10 29 record is not required to be maintained for more than five
10 30 years.

10 31 SUBCHAPTER 4

10 32 ENFORCEMENT

10 33 Sec. 12. NEW SECTION. 190C.21 GENERAL ENFORCEMENT.

10 34 The department and the attorney general shall enforce this
10 35 chapter. The attorney general may commence legal proceedings
11 1 in district court at the request of the department or upon the
11 2 attorney general's own initiative in order to enforce this
11 3 chapter, including rules adopted and orders issued by the
11 4 department pursuant to this chapter. This chapter does not
11 5 require the attorney general or the department to institute a
11 6 proceeding for a minor violation, if the attorney general or
11 7 department concludes that the public interest will be best
11 8 served by a suitable notice of warning in writing.

11 9 Sec. 13. NEW SECTION. 190C.22 INVESTIGATIONS
11 10 COMPLAINTS INSPECTIONS EXAMINATIONS.

11 11 1. The department may conduct an investigation to
11 12 determine if a person is complying with the requirements of
11 13 this chapter.

11 14 2. Any person may file a complaint with the department
11 15 regarding a violation of this chapter. The department shall
11 16 adopt procedures for persons filing complaints. The
11 17 department shall establish procedures for processing
11 18 complaints including requiring minimum information to
11 19 determine the verifiability of a complaint.

11 20 3. The department may conduct inspections at times and
11 21 places, and to an extent that the department determines
11 22 necessary in order to conclude whether an agricultural product
11 23 is being produced, handled, processed, or sold in accordance
11 24 with the provisions of this chapter. The department may
11 25 inspect records required to be maintained pursuant to section
11 26 190C.16. The department may enter upon any public or private
11 27 premises during regular business hours in a manner consistent
11 28 with the laws of this state and the United States, including
11 29 Article I, section 8, of the Constitution of the State of
11 30 Iowa, or the fourth amendment to the Constitution of the
11 31 United States for purposes of carrying out an inspection.

11 32 4. The department may conduct examinations of agricultural
11 33 products in order to determine if the products are produced,
11 34 handled, processed, and sold in compliance with this chapter.

11 35 a. The methods for examination shall be the official
12 1 methods of the association of official agricultural chemists
12 2 in all cases where methods have been adopted by the
12 3 association.

12 4 b. A sworn statement by the state chemist or the state
12 5 chemist's deputy stating the results of an analysis of a
12 6 sample taken from a lot of agricultural products shall

12 7 constitute prima facie evidence of the correctness of the
12 8 analysis of that lot in an administrative hearing or court of
12 9 this state.

12 10 Sec. 14. NEW SECTION. 190C.23 DISCIPLINARY ACTION.

12 11 1. The department may take disciplinary action concerning
12 12 a person who is certified or registered pursuant to this
12 13 chapter by doing any of the following:

12 14 a. Issuing a letter of warning or reprimand.

12 15 b. Suspending or terminating a certification or denying an
12 16 application for certification required pursuant to section
12 17 190C.13.

12 18 c. Suspending or canceling a registration or denying an
12 19 application for registration as required pursuant to section
12 20 190C.14.

12 21 2. The disciplinary action must be based upon evidence
12 22 satisfactory to the department that the person has used
12 23 fraudulent or deceptive practices in violation of this chapter
12 24 or has willfully disregarded the requirements of this chapter.

12 25 Sec. 15. NEW SECTION. 190C.24 STOP SALE ORDER.

12 26 1. If a person sells an agricultural product in violation
12 27 of this chapter, including a rule adopted or an order issued
12 28 under this chapter, the department may issue a written order
12 29 to stop the sale of the agricultural product by a person in
12 30 control of the agricultural product. The person named in the
12 31 order shall not sell the item until the department determines
12 32 that the sale of the agricultural product is in compliance
12 33 with this chapter.

12 34 2. The department may require that the product be held at
12 35 a designated place until released by the department.

13 1 3. The department or the attorney general may enforce the
13 2 order by petitioning the district court in the county where
13 3 the agricultural product is being sold.

13 4 4. The department shall release the agricultural product
13 5 when the department issues a release order upon satisfaction
13 6 that legal requirements compelling the issuance of the stop
13 7 sale order are satisfied, and all expenses incurred by the
13 8 department in connection with the agricultural product's
13 9 removal have been paid to the department.

13 10 Sec. 16. NEW SECTION. 190C.25 INJUNCTIONS.

13 11 The attorney general, the department, or an individual,
13 12 private organization or association, county, or city may bring
13 13 an action in district court to restrain a producer, processor,
13 14 handler, or retailer from selling agricultural products by
13 15 making claims of genuineness which are false or misleading. A
13 16 petitioner shall not be required to allege facts necessary to
13 17 show, or tending to show, a lack of adequate remedy at law, or
13 18 that irreparable damage or loss will result if the action is
13 19 brought at law or that unique or special circumstances exist.

13 20 Sec. 17. NEW SECTION. 190C.26 PENALTIES.

13 21 A person who violates this chapter is subject to a civil
13 22 penalty of not more than five thousand dollars. Civil
13 23 penalties shall be assessed by the district court in an action
13 24 initiated by the attorney general. Each day that the offense
13 25 continues constitutes a separate offense. However, a person
13 26 shall not be subject to a civil penalty of more than twenty-
13 27 five thousand dollars for a continuing offense. Civil
13 28 penalties collected under this section shall be deposited in
13 29 the general fund of the state.

13 30 Sec. 18. Chapter 190B, Code 1997, is repealed.

13 31 Sec. 19. IMPLEMENTATION.

13 32 1. The department of agriculture and land stewardship
13 33 shall present proposed rules required to implement this Act to
13 34 the organic standards review and appeals board for approval
13 35 prior to filing the rules pursuant to section 17A.5.

14 1 2. Not later than ninety days after the effective date of
14 2 this Act, the governor shall appoint the members of the
14 3 organic standards review and appeals board as established

14 4 pursuant to section 190C.2. The governor shall make the
14 5 appointments from nominations received by the governor from
14 6 interested persons and organizations as recognized by the
14 7 governor. Members initially appointed to the board are not
14 8 required to be certified as provided in section 190C.13.
14 9 Sec. 20. EFFECTIVE AND APPLICABILITY DATES. This Act,
14 10 being deemed of immediate importance, takes effect upon
14 11 enactment. However, the department shall not be required to
14 12 implement all of the provisions of this Act until it receives
14 13 necessary certification or approval by the United States
14 14 department of agriculture.

14 15 EXPLANATION

14 16 This bill establishes requirements for the production,
14 17 handling, processing, and sale of organic agricultural
14 18 products, including commodities and processed products. The
14 19 requirements are administered by the department of agriculture
14 20 and land stewardship. The bill replaces provisions in Code
14 21 chapter 190B which currently governs the sale of organic food.

14 22 The bill establishes a certification standards and appeals
14 23 board within the department. The members of the board
14 24 appointed by the governor represent persons involved in the
14 25 production, handling, processing, and sale of organic
14 26 agricultural products. The board also includes a member with
14 27 an educational background in agricultural or food science and
14 28 a person representing public interest, consumer, or
14 29 environmental organizations. The board is responsible for a
14 30 number of issues, including monitoring the industry, compiling
14 31 and distributing materials designed to assist interested
14 32 persons, assisting the department in developing and
14 33 interpreting the requirements of the new chapter, providing
14 34 recommendations to the department regarding the administration
14 35 and enforcement of the chapter, and hearing appeals of
15 1 contested cases involving disciplinary action brought by the
15 2 department against persons violating the requirement of the
15 3 bill.

15 4 The bill provides a number of requirements which must be
15 5 satisfied in order to sell an agricultural product as organic,
15 6 regardless of whether the product was produced, handled, or
15 7 processed in the state or outside of the state. The
15 8 requirements include standards which the department is
15 9 required to establish by rulemaking. The bill requires that
15 10 the agricultural product must be produced, handled, and
15 11 processed without the use of synthetic additives or materials.

15 12 The bill requires the department to establish and
15 13 administer a program to certify producers, handlers, and
15 14 processors of agricultural products who make claims of
15 15 genuineness about the production, handling, and processing of
15 16 organic agricultural products. In order to be certified, a
15 17 producer, handler, and processor must submit to the department
15 18 an organic plan which includes methods used to ensure that the
15 19 agricultural products are produced, handled, and processed
15 20 according to the bill's standards. Persons required to be
15 21 certified are also required to maintain records regarding
15 22 business operations. Retailers and persons receiving limited
15 23 income from the sale of agricultural products are excused from
15 24 certification requirements. However, these persons are
15 25 required to register with the department. The bill provides
15 26 that a person is not required to both be certified and
15 27 registered. The bill imposes fees upon persons required to be
15 28 certified or registered. The fees are established at an
15 29 amount required to support administration and enforcement of
15 30 the bill. The bill appropriates an amount of money equal to
15 31 the moneys raised in fees in order to support departmental
15 32 operations.

15 33 The bill authorizes the department to regulate the labeling
15 34 of agricultural products claimed as being organic. The
15 35 department is also authorized to establish a seal certifying

16 1 that an agricultural product does comply with the requirements
16 2 of the bill.

16 3 The bill contains a number of provisions regarding
16 4 enforcement. Generally, the department and the attorney
16 5 general are required to enforce the bill's provisions. The
16 6 department is authorized to conduct investigations, including
16 7 investigations based on complaints received by the department.
16 8 The department is also authorized to conduct inspections of
16 9 premises where production, handling, processing, and sales
16 10 occur. The department may examine agricultural products to
16 11 ensure compliance with the bill's provisions. The department
16 12 may take disciplinary action concerning a person who is
16 13 certified or registered, by issuing a letter of warning or
16 14 reprimand, suspending or terminating a certification or
16 15 denying an application for certification, or suspending or
16 16 canceling a registration or denying an application for
16 17 registration. The department may issue a stop sale order to
16 18 prevent the sale of that agricultural product which may be
16 19 sold in violation of the bill's provisions. The bill grants a
16 20 right of a private attorney general to persons, by allowing
16 21 anyone to bring an action in district court to restrain a
16 22 producer, processor, handler, or retailer from selling
16 23 agricultural products in violation of the bill.

16 24 A person who violates the bill's provisions is subject to a
16 25 civil penalty of not more than \$5,000. Civil penalties must
16 26 be assessed by a district court in an action initiated by the
16 27 attorney general.

16 28 The bill provides for implementation of the bill's
16 29 provisions, including the adoption of rules and the
16 30 appointment of members to the organic standards review and
16 31 appeals board.

16 32 The bill takes effect upon enactment. However, the
16 33 department is not required to implement all of the provisions
16 34 of the bill until certified or approved by the United States
16 35 department of agriculture.

17 1 LSB 4320SC 77

17 2 da/sc/14