

## **BILL ANALYSIS**

Senate Research Center  
78R6073 AKH-H

S.B. 1268  
By: Estes  
Subcommittee on Agriculture  
3/24/2003  
As Filed

### **DIGEST AND PURPOSE**

Currently, the Texas Department of Agriculture (TDA) is accredited as an organic certification agent under the United States Department of Agriculture National Organic program. In order for TDA to be in full compliance, it must make some additional modifications to its regulations. If statutory amendments are not completed during this legislative session, TDA's accreditation as a certifier may be revoked. As proposed, S.B. 1268 amends TDA's organic program to adopt regulations in compliance with federal regulations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Agriculture in SECTION 2 (Section 18.002, Agriculture Code), SECTION 3 (Section 18.003, Agriculture Code), SECTION 6 (Section 18.0075, Agriculture Code) and SECTION 9 (Section 18.011, Agriculture Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Agriculture is modified in SECTION 3 (Section 18.003, Agriculture Code), and SECTION 4 (Section 18.006, Agriculture Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 18.001, Agriculture Code, as follows:

Sec. 18.001. DEFINITIONS. Redefines "agricultural product," "natural organic production program," and "organic." Deletes the definitions of "organic farming," "organic food," "organic fiber," "processor," "producer," and "retailer."

SECTION 2. Amends Section 18.002, Agriculture Code, to read as follows:

Sec. 18.002. New heading: ORGANIC STANDARDS PROGRAM. (a) Authorizes the Texas Department of Agriculture (TDA) by rule to create and administer a program for the administration and enforcement of standards related to organic agricultural products, including certification of persons who produce, process, distribute, or handle organic agricultural products and to regulate the use of "organic" and related terms. Deletes text authorizing TDA to adopt the necessary rules to enforce and administer this suchapter.

(b) Requires any program created by TDA under Subsection (a) to be consistent with the provisions of the national organic production program.

(c) Authorizes TDA, to the extent consistent with federal law, to adopt standards related to organic agricultural products other than the standards established by the national organic production program.

(d) Authorizes TDA to enter into an agreement with the United States Department of

Agriculture (USDA) to act as an organic certifying agent or to provide primary enforcement of state and national standards relating to organic agricultural products.

(e) Authorizes TDA, in regulating organic agricultural products under this subchapter, to require certification, registration, or other documentation it considers necessary for certain enforcement measures.

SECTION 3. Amends Section 18.003, Agriculture Code, as follows:

(a) Authorizes, rather than requires, TDA to certify each person who produces, processes, distributes, or handles an organic agricultural product. Deletes text requiring TDA to certify producers, processors, distributors, and retailers of organic food and fiber. Deletes text requiring TDA by rule to adopt minimum standards for certification under this subchapter,

(b) Authorizes a person, as prescribed by TDA rule, to apply for any required certification, rather than an organic certification, under this subchapter, rather than renewal of an organic certification, by submitting an application for certification, a plan for production, processing, distribution, or handling of organic agricultural products, and a fee.

(c) Authorizes TDA by rule to require a person certified under this subchapter to submit an annual report of that person's production, processing, distribution, or handling of organic agricultural products, along with an annual reporting fee. Deletes text requiring organic certification to be for a period prescribed by TDA. Deletes text requiring a person who fails to meet the expiration deadline for certification to pay late fee in addition to the renewal fee.

(d) Authorizes TDA to require by written notice that a person certified under this subchapter submit any additional report, including copies of records, it considers necessary to investigate or monitor production, processing, distribution, or handling of organic agricultural products. Deletes text authorizing a certified person to use TDA logos.

(e) Provides that a certificate issued under this subchapter remains in effect until surrendered, suspended, or revoked in accordance with procedures established by TDA rule and Section 18.0075.

SECTION 4. Amends Sections 18.006(a), (b), and (c), Agriculture Code, as follows:

(a) Authorizes TDA by rule to require a fee for each application certification; each application for registration or registration renewal; each annual report required by TDA; each certificate issued by TDA; and each document required by the federal government, another state, or a foreign country that is issued by TDA under this subchapter. Deletes text requiring that an annual fee, as provided by TDA rule, be changed to each applicant certified as a producer, distributor, or retailer, processor of organic food or fiber produced in this state.

(b) Authorizes TDA to establish a different fee amount for each fee under Subsection (a). Makes a conforming change.

(c) Authorizes TDA to establish a late fee in an amount that is not more than twice the amount of the fee authorized under Subsection (a) and required to be paid by a date established by rule or by written notice provided to the person who owes the fee. Deletes text requiring an annual charge for a person who obtains a certificate of registration as an organic certifying agent, as provided by TDA rule.

SECTION 5. Amends Section 18.007, Agriculture Code, as follows:

Sec. 18.007. New heading: DENIAL, SUSPENSION, OR REVOCATION OF

ORGANIC CERTIFICATION OR REGISTRATION. Authorizes TDA to deny, suspend, or revoke a certification or registration issued under this subchapter if the person to whom the certification or registration fails to meet certain requirements. Makes conforming changes.

SECTION 6. Amends Chapter 18A, Agriculture Code, by adding Section 18.0075, as follows:

Sec. 18.0075. ADMINISTRATIVE PROCEDURES. (a) Requires TDA by rule to adopt administrative procedures relating to assessment of administrative penalties and other sanctions for violations of this subchapter, to the extent consistent with the requirements of the national organic production program. Provides that Chapter 2001(Administrative Procedure), Government Code, does not apply to department rules adopted under this subchapter to the extent that Chapter 2001, Government Code, conflicts with the requirements of the national organic production program.

(b) Requires TDA to provide a person with written notice of its intent to assess the person with an administrative penalty or other sanction. Requires TDA to allow the person not less than 10 days after the date the person receives the notice to provide TDA with a written response to the notice. Requires the report to contain any request for a hearing and a general or specific denial that the TDA's action is warranted by the facts or law.

(c) Authorizes TDA administrative procedures to provide for a default judgment without a hearing for failure to submit to TDA a written response to the notice.

(d) Authorizes a default judgment to be entered under this section by order of the commissioner of agriculture. Provides that the order entering a default judgment is final on the day the commissioner issues the order.

(e) Authorizes a default judgment to be appealed for review de novo to a Travis County district court not later than the first anniversary of the date the order is issued under Subsection (d).

(f) Authorizes a court, on appeal, to only consider the issue of whether the appellant received proper notice and whether the appellant sent a proper response under Subsection (b). Provides that the appellant has the burden of proof to establish, by a preponderance of the evidence, that proper notice was not received or that a proper response under Subsection (b) was provided. Requires the default judgment to be vacated and the case to be remanded to TDA for an administrative hearing on the substantive issues raised by TDA's notice, if the appellant prevails.

(g) Requires the State Office of Administrative Hearings to conduct any hearing required by a TDA rule adopted under this subchapter.

SECTION 7. Amends Section 18.009(a), Agricultural Code, to increase the civil penalty against a person who violates this subchapter from \$500 to \$10,000.

SECTION 8. Amends Sections 18.010(a) and (b), Agriculture Code, as follows:

(a) Authorizes TDA, if an organic agricultural product, rather than food or fiber, is being sold or distributed in violation of this subchapter or a rule adopted under this subchapter, to issue a written order to stop the sale or distribution of the product, rather than that item of food or fiber, by a person in control of the product, rather than the item. Prohibits the product named in the order from being sold or distributed while, rather than prohibiting the person named in the order from selling the item, labeled, marketed, advertised, or otherwise represented as "organic" until certain conditions are

met.

(b) Makes conforming changes.

SECTION 9. Amends Chapter 18A, Agriculture Code, by adding Section 18.011, as follows:

Sec. 18.011. PUBLIC INFORMATION. Provides that information created, collected, assembled, or maintained by TDA under this subchapter is public information, except that TDA by rule may exempt specified information from disclosure but only to the extent necessary to comply with the national organic production program.

SECTION 10. Repealer: Section 18.004, Agriculture Code (Organic Certifying Agent Registration Program).

Repealer: Section 18.005, Agriculture Code (Use of Term Organic).

SECTION 11. Effective date: upon passage or September 1, 2003.