

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1117 (Laird)
Version: March 18, 2024
Hearing Date: April 16, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Organic products

DIGEST

This bill makes various changes to the California Organic Food and Farming Act (Act), including authorizing the Secretary of Food and Agriculture (Secretary) and county agricultural commissioners to levy a civil penalty as provided if they find that a person or responsibly connected person knowingly sells or labels a product as organic in violation of existing state or federal law. The bill also provides that the Secretary is entitled to reimbursement for reasonable attorney's fees and other related costs, including investigative costs, involved in the enforcement of the Act.

EXECUTIVE SUMMARY

The California Department of Food and Agriculture (CDFA) State Organic Program (SOP) enforces both the federal Organic Foods Production Act of 1990 and the California Organic Food and Farming Act of 2016, which establish standards for labeling food and agriculture products as organic. In January 2023, the United States Department of Agriculture (USDA) published the Strengthening Organic Enforcement final rules (i.e. regulations) to strengthen oversight and enforcement of the production, handling, and sale of organic agricultural products. This bill makes changes to align state law with the SOE final rule and also bolsters the SOP by streamlining inspections and sample collection, authorizing the Secretary to recover attorney's fees and other investigative costs, and strengthening misleading labeling provisions. The bill is author sponsored and supported by A Voice for Choice Advocacy. No timely opposition was received by the Committee. The bill passed the Senate Agriculture Committee on a vote of 4 to 0.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Establishes the Organic Foods Production Act of 1990, which is administered by the USDA and establishes standards for production, handling, and sale of organic agricultural products. (7 U.S.C. § 6501 e. seq.)
- 2) Establishes the National Organic Program (NOP), which only allows certified organic producers to use the term “organic” and provides for certification by state, non-profit, and private agencies approved by the USDA. (7 C.F.R. § 205 et. seq.)

Existing state law:

- 1) Establishes the California Organic Food and Farming Act (Act), which requires the Secretary and county agricultural commissioners to enforce state and federal laws relating to the production, labeling, and marketing of organic products. (Food & Ag. Code § 46000 et. seq.)
 - a) Authorizes the secretary and the county agricultural commissioners to conduct a program of spot inspections to determine compliance with the Act.
- 2) Specifies that certain acts are unlawful under the Act, including:
 - a) producing or handling a product sold as organic unless duly registered; and
 - b) willfully making a false statement or representation, or knowingly failing to disclose a fact required to be disclosed, in registration;
- 3) Prohibits any food or product from being advertised or labeled as “organic when available” or similar terminology that leaves in doubt whether the food sold is organic.
- 4) Requires every person engaged in this state in the production or handling of raw agricultural products sold as organic to register with the Secretary before the first sale of the product, as specified. (7 C.F.R. § 205 et. seq.)
 - a) Provides an appeal process for the denial and revocation of a registration.
- 5) Authorizes the Secretary of county agricultural commission, in lieu of prosecution, to levy a civil penalty against any person under the enforcement jurisdiction of the Act or the NOP in an amount not more than \$5,000 for each violation. (Food & Ag. Code § 46017(a).)
 - a) If the Secretary or county agricultural commissioner finds that a violation was not intentional, the civil penalty may not be more than \$2,500 for each violation. (*Id.* at (b).)
 - b) Authorizes an assessed civil penalty to be recovered in a civil action, as specified. (*Id.* at (f).)

This bill:

- 1) Specifies that the secretary and the county agricultural commissioners can conduct a program of announced and unannounced spot inspections and collect samples to conduct periodic substance testing.
- 2) Authorizes the Secretary and the county agricultural commissioners to levy a civil penalty against a person or a responsibly connected person who is found to have knowingly sold or labeled a product as organic in violation of the Act or the NOP in an amount no more than those specified in federal regulations.
- 3) Provides that the Secretary is entitled to reimbursement for reasonable attorney's fees and other related costs, including investigative costs, involved in the enforcement of the Act.

COMMENTS

1. Stated need for the bill

The author writes:

SB 1117 ensures that the standards are met for agricultural products and foods that are labeled and sold as organic, protecting California consumers, producers, handlers, processors, and retailers. The bill aligns the California Department of Food and Agriculture's State Organic Program (SOP) with recent updates to the United States Department of Agriculture's Strengthening Organic Enforcement Final Rule. This bill enhances the integrity of organic products by refining the process for inspections and sample collection, enabling reasonable cost recovery for attorney's fees and other costs from violations of the Organic Food and Farming Act, and by strengthening prohibitions on misleading labeling that leaves consumers in doubt whether the food or product is organic.

2. Streamlining and strengthening the SOP

This bill aligns the SOP with recent changes made to the NOP by the USDA through the adoption of the Strengthening Organic Enforcement final rules, such as updating various definitions under the Act and necessary corresponding changes. The bill also makes several changes to bolster the SOP program. It expressly authorizes spot inspections to be announced or unannounced and that samples can be collected to conduct periodic substance testing on products labeled organic. The bill also authorizes the Secretary and county agricultural commissioners to levy a civil penalty against a person or a responsibly connected person who is found to have knowingly sold or labeled a product as organic in violation of the Act or the NOP in an amount no more than those specified in Section 3.91(b)(1)(xxxvi) of Title 7 of the Code of Federal Regulations. Lastly, the bill provides that the Secretary is entitled to reimbursement for

reasonable attorney's fees and other related costs, including investigative costs, involved in the enforcement of the Act.

3. Statements in support

A Voice for Choice Advocacy writes in support stating:

AVFCA advocates for people's rights to be fully informed about the composition, quality, and short- and long-term health effects of all products that go into people's bodies, such as food, water, air, pharmaceuticals, and cosmetics.

We support this bill to authorize the Secretary of Food and Agriculture to establish procedures for and conduct announced/unannounced periodic spot inspections, collecting samples to conduct periodic substance testing on products labeled as organic.

SUPPORT

A Voice for Choice Advocacy

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1826 (Stone, Ch. 403, Stats. 2016) revised and recast the California Organic Products Act of 2003 as the California Organic Food and Farming Act, and made various other changes.

AB 2612 (Committee on Agriculture, Ch. 393, Stats. 2010) made several changes to the California Organic Products Act of 2003, including adding definitions for "exempt handlers" and "exempt producers" and streamlined the organic registration process.

PRIOR VOTES

Senate Agriculture Committee (4 Ayes, 0 Noes)
