

AMENDMENTS TO ASSEMBLY BILL NO. 1826

Amendment 1

In the title, in line 1, strike out "amend Section 46000" and insert:

repeal and add Chapter 10 (commencing with Section 46000) of Division 17

Amendment 2

In the title, in line 1, after "Code," insert:

and to amend Sections 110810, 110812, 110860, 110920, and 110925 of, to repeal Section 110870 of, and to repeal and add Sections 110815, 110875, and 110958 of, the Health and Safety Code,

Amendment 3

In the title, in line 2, strike out "foods." and insert:

products.

Amendment 4

On page 1, before line 1, insert:

SECTION 1. The Legislature finds and declares all of the following:

(a) The state organic program was first established under the California Organic Products Act of 1990 and amended in the California Organic Products Act of 2003. The state organic program was developed before and during the development of federal organic standards. Today, a robust federal organic certification and enforcement program exists.

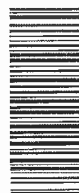
(b) As a result of the state organic program, California certified organic producers pay more fees, are subject to duplicate registration and extra documentation, and are required to comply with more regulation than producers outside of California to use the same organic label.

(c) As a result of the state organic program, the National Organic Program focuses its enforcement funds outside of California, and it relies on the state organic program's additional fees on California producers to fund enforcement in California.

(d) The purpose of amending the existing law governing the state organic program is to reform fees and paperwork and to create a framework whereby state organic program enforcement activities are designed to supplement National Organic Program-funded enforcement in California.

SEC. 2. Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code is repealed.

SEC. 3. Chapter 10 (commencing with Section 46000) is added to Division 17 of the Food and Agricultural Code, to read:



## CHAPTER 10. CALIFORNIA ORGANIC FOOD AND FARMING ACT

## Article 1. General Provisions

46000. (a) This chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code shall be known and may be cited as the California Organic Food and Farming Act.

(b) The secretary and county agricultural commissioners under the supervision and direction of the secretary shall enforce regulations adopted by the National Organic Program (NOP) (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code and this act applicable to any person selling products as organic.

(c) This chapter shall be interpreted in conjunction with Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code and regulations adopted by the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)).

46001. For purposes of this act, the following terms have the following meanings:

(a) "Accredited certification agency" means an entity accredited by the United States Department of Agriculture to certify operations as compliant with the federal organic standards.

(b) "Act" means the California Organic Food and Farming Act.

(c) "Categorical products" means categories of products of like commodity such as apples and salad products, and does not require variety specific information.

(d) "Certified operation" means a producer, handler, or retail food establishment that is certified organic by an accredited certification agency as authorized by the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and implemented pursuant to the National Organic Program.

(e) "Data" means the information provided annually by persons registered under the act, including certified organic acreage and gross sales of certified organic products.

(f) "Department" means the State Department of Public Health.

(g) "Director" means the director and State Public Health Officer for the State Department of Public Health.

(h) "Enforcement authority" means the governmental unit with primary enforcement jurisdiction, as provided in Section 46022.

(i) "Exempt handler" means a handling operation that sells agricultural products as "organic" but whose gross agricultural income from organic sales totals five thousand dollars (\$5,000) or less annually.

(j) "Exempt operation" means a production or handling operation that sells agricultural products but is exempt from certification under federal organic standards.

(k) "Exempt producer" means a production operation that sells agricultural products as "organic" but whose gross agricultural income from organic sales totals five thousand dollars (\$5,000) or less annually.

(l) "Federal organic standards" means the federal regulations governing production, labeling, and marketing of organic products as authorized by the federal

Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and implemented pursuant to the National Organic Program (7 C.F.R. Sec. 205 et seq.), and any amendments to the federal act or regulations made subsequent to the enactment of this chapter.

(m) "Handle" means to sell, process, or package agricultural products.

(n) "Handler" means any person engaged in the business of handling agricultural products, but does not include final retailers of agricultural products that do not process agricultural products.

(o) "Handling operation" means any operation or portion of an operation, except final retailers of agricultural products that do not process agricultural products that (1) receives or otherwise acquires agricultural products, and (2) processes, packages, or stores agricultural products.

(p) "Inspection" means the act of examining and evaluating a production or handling operation to determine compliance with state and federal law.

(q) "National Organic Program" or "NOP" means the National Organic Program established pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted for implementation.

(r) "Person" means any individual, firm, partnership, trust, corporation, limited liability company, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within the state, and any representative, agent, or agency of any of the foregoing.

(s) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes packaging, canning, jarring, or otherwise enclosing food in a container.

(t) "Producer" means a person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.

(u) "Prohibited substance" means a substance the use of which in any aspect of organic production or handling is prohibited or not provided for in state or federal law.

(v) "Residue testing" means an official or validated analytical procedure that detects, identifies, and measures the presence of chemical substances, their metabolites, or degradation products in or on raw or processed agricultural products.

(w) "Retail food establishment" means a restaurant, delicatessen, bakery, grocery store, or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat-food.

(x) "Secretary" means the Secretary of Food and Agriculture.

(y) "USDA" means the United States Department of Agriculture.

46002. (a) All organic food or product regulations and any amendments to those regulations adopted pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.), that are in effect on the date this act is enacted or that are adopted after that date, shall be the organic food and product regulations of this state.

(b) The secretary may, by regulation, prescribe conditions under which organic foods or other products not addressed by the National Organic Program may be sold in this state.

(c) The purpose of the state organic program shall be to do the following:

- (1) Supplement the National Organic Program enforcement of federal organic standards.
  - (2) Promote coordination of federal, state, and local agencies in implementation of the National Organic Program.
  - (3) Expand, improve, and protect the production of organic products.
  - (4) Assist operations in achieving organic certification.
  - (5) Provide technical assistance, education, outreach, and guidance to the organic industry.
- (d) The secretary may receive and expend state and federal funds for activities authorized under this act.

## Article 2. Administration

46011. (a) The secretary shall establish a memorandum of understanding with the director to assist in the administration of the state organic program and responsibilities authorized under this act.

(b) The secretary may contract with county agricultural commissioners to implement this act.

46012. (a) To the extent that funds are available, the secretary, in consultation with the advisory committee established pursuant to Section 46014, may establish procedures for and conduct the following activities to supplement enforcement of NOP standards in the state:

(1) Receive and investigate complaints filed by any person concerning suspected acts of noncompliance with this act or federal organic standards.

(2) Conduct periodic spot inspections.

(3) Conduct periodic prohibited material testing on products labeled as organic to supplement the Department of Pesticide Regulation residue testing program authorized in Section 12532, the pesticide residue monitoring program on processed foods authorized by Article 1 (commencing with Section 110425) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, and annual testing conducted by accredited certification agencies.

(4) Conduct farmers' market inspections to supplement those conducted under the certified farmers' market program pursuant to Chapter 10.5 (commencing with Section 47000).

(b) Investigation, inspection, and prohibited material testing reports shall be forwarded to the secretary or to NOP for any required enforcement action.

(c) The secretary shall coordinate state organic program activities authorized under this section with other county and state licensing, registration, inspection, and fee collection procedures applicable to registrants.

46013. To the extent funds are available, the secretary may, in consultation with the advisory committee, use state organic program funds to conduct the following activities:

(a) Expand, improve, and protect the production of organic products.

(b) Assist operations in achieving organic certification, including transition to organic.

(c) Provide technical assistance, education, outreach, and guidance to the organic industry.

46014. (a) The secretary shall establish an advisory committee, which shall be known as the California Organic Products Advisory Committee, for the purpose of advising the secretary with respect to his or her responsibilities under this act and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) An advisory committee established under this chapter shall also advise the secretary, the University of California, and the California State University on education, outreach, and technical assistance for organic producers.

(c) The advisory committee shall be comprised of 16 members as follows:

(1) Six members shall be producers, at least one of whom shall be a producer of meat, fowl, fish, dairy products, or eggs.

(2) Two members shall be processors.

(3) One member shall be a wholesale distributor.

(4) One member shall be a representative of an accredited certification agency operating in the state.

(5) One member shall be a consumer representative.

(6) One member shall be an environmental representative.

(7) Two members shall be technical representatives with scientific credentials related to agriculture or food science.

(8) One member shall be a food retail establishment representative.

(9) One member shall be a representative from the University of California or California State University system.

(d) Except for the accredited certification agency, consumer, environmental, technical, and University of California or California State University system representatives, the members of the advisory committee shall have derived a substantial portion of their business income, wages, or salary as a result of services they provide that directly result in the production, handling, processing, or retailing of products sold as organic for at least three years preceding their appointment to the advisory committee.

(e) The consumer and environmental representatives shall not have a financial interest in the direct sales or marketing of the organic product industry and shall be members or employees of representatives of recognized nonprofit organizations whose principal purpose is the protection of consumer health or protection of the environment.

(f) The technical and University of California or California State University system representatives shall not have a financial interest in the production, handling, processing, or marketing of the organic products industry. The technical and university system representatives may be involved in organic research or technical review providing they have no financial benefit from results of the research project or technical review.

(g) (1) Each member of the committee may have an alternate who satisfies the same requirements as the member.

(2) An alternate member shall serve at an advisory committee meeting only in the absence of, and shall have the same powers and duties as, the category whom he or she is representing as alternate, except for duties and powers as an officer of the committee. The number of alternates present who are not serving in the capacity of a member shall not be considered in determining a quorum.

(3) An alternate member may serve at an advisory committee subcommittee meeting only in the absence of, and shall have the same powers and duties as, the

member whom he or she is designated as alternate, except for duties and powers as a subcommittee chairperson.

(h) The members of the advisory committee and their alternates shall be reimbursed for the reasonable expenses actually incurred in the performance of their duties, as determined by the advisory committee and approved by the secretary. The secretary may authorize payment of per diem to each attendee based on a recommendation of the advisory committee.

(i) The secretary or his or her representative, the director or his or her representative, the director of the Department of Pesticide Regulation or his or her representative, and a county agricultural commissioner may serve as ex officio members of the advisory committee.

(j) The advisory committee shall review and make recommendations to the secretary and the director on the state organic program budget, including all fee revenues and penalties assessed from exempt operations, accredited certification agencies, and retail food establishments, and all expenses of the program.

(k) The advisory committee shall meet at least two times annually and submit an annual report to the secretary that summarizes issues for organic agriculture and food production in the state.

### Article 3. Registration

46021. (a) Except as specified in subdivision (b), a person engaged in this state in the production or handling of raw agricultural products sold as organic, and retailers that are engaged in the production of products sold as organic, and retailers that are engaged in the processing, as defined by the NOP, of products sold as organic, shall register with the county agricultural commissioner in the county of principal operation before the first sale of the product. All processors of organic agriculturally derived products that are not required to be registered with the director under Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code shall register with the secretary. Each registrant shall provide a complete copy of its registration to the county agricultural commissioner in any county in which the registrant operates.

(b) A person certified under the National Organic Program shall be deemed registered and shall not be required to register pursuant to subdivision (a).

(c) The secretary, in consultation with the advisory committee, shall establish procedures for registration and information required for registration.

(d) Registration pursuant to this section shall be valid for one year and shall be renewed annually.

46022. (a) This act shall not apply to the term "natural" when used in the labeling or advertising of a product.

(b) This act also applies to seed, fiber, and horticultural products. The terms "foods" and "raw agricultural commodities" as used in this chapter include seed, fiber, and horticultural products where the context requires to effectuate this section.

(c) Article 14 (commencing with Section 43031) of Chapter 2 applies to any food product that is represented as organically produced by any person who is not registered as required by this chapter or any product that is not in compliance with this chapter or Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of

Division 104 of the Health and Safety Code. The secretary, county agricultural commissioners, and the director shall be considered enforcing officers for purposes of those provisions of law under their respective jurisdiction.

46023. (a) To the extent feasible, the secretary shall coordinate the registration and fee collection procedures of this section with similar licensing or registration procedures applicable to registrants.

(b) The secretary or county agricultural commissioner shall deny a registration submission that is incomplete or not in compliance with this act.

(c) A registrant shall, within a reasonable time, notify the secretary of any change in the information reported on the registration form and shall pay any additional fee owed if that change results in a higher fee owed than that previously paid.

(d) At the request of any person, the public information sheet for any registrant shall be made available for inspection and copying at the main office of the department and each county agricultural commissioner. Copies of the "public information sheet" shall also be made available by mail, upon written request. The secretary or county agricultural commissioner may charge a reasonable fee for the cost of reproducing a "public information sheet." Except as provided in this subdivision, a registration form is exempt from Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(e) The secretary, in consultation with the California Organic Products Advisory Committee, may suspend the registration program set forth in this section if the secretary determines that income derived from registration fees is insufficient to support a registration enforcement program.

(f) A registration is considered legal and valid until revoked, suspended, or until the expiration of the registration.

(g) The registration revocation process shall be in conjunction with other provisions of this chapter. The secretary or county agricultural commissioner's office may initiate the revocation process for failure to comply with the NOP or this act. Any person against whom the action is being taken shall have the opportunity to appeal the action and be afforded the opportunity to be heard in an administrative appeal. This appeal shall be administered by either the state or county agricultural commissioner's office.

(h) When the registration fee is not paid within 60 days from the expiration date, the account shall be considered closed and the registration voided. A notification shall be sent to the registrant and the certifier, if applicable, notifying them the registrant is no longer able to market products as organic until the account is paid in full.

(i) Any producer, handler, processor, or certification agency subject to this chapter that does not pay the fee within 10 days of the date on which the fee is due and payable shall pay a penalty of 10 percent of the total amount determined to be due plus interest at the rate of 1.5 percent per month on the unpaid balance.

46024. (a) Any certification organization that certifies product in this state sold as organic shall register with the secretary and shall thereafter annually renew the registration, unless the organization is no longer engaged in the activities requiring the registration. Registration shall be on a form provided by the secretary, and shall include a copy of accreditation by the USDA or proof of application, if applicable.

(b) For the purpose of conducting activities authorized under this act, the secretary shall require certifying agents operating in the state to annually submit the information

that it submits to the NOP directly to the state organic program. The secretary shall accept the information in the same format that the certifying agent uses to submit information to the NOP.

(c) Any registration submitted by a certification organization shall be made available to the public for inspection and copying. The secretary may audit the organization's certification procedures and records at any time, but any records of the certification organization not otherwise required to be disclosed shall be kept confidential by the secretary.

(d) The secretary and the county agricultural commissioners under the supervision of the secretary shall, if requested by a sufficient number of persons to cover the costs of the program in a county as determined by the secretary, establish a certification program. This program shall meet all of the requirements of this chapter. In addition, this program shall meet all of the requirements of the federal certification program, including federal accreditation. The secretary shall establish a fee schedule for participants in this program that covers all of the department's reasonable costs of the program. A county agricultural commissioner that conducts a voluntary certification program pursuant to this section shall establish a fee schedule for participants in this program that covers all of the county's reasonable costs of the program. The secretary may not expend funds obtained from registration fees collected under this chapter for the purposes of adopting or administering this program.

(e) The certification fee authorized under subdivision (d) is due and payable on January 1 or may be prorated before the 10th day of the month following the month in which the decision to grant the certification is issued. Any person who does not pay the amount that is due within the required period shall pay the enforcement authority providing the certificate a penalty of 10 percent of the total amount determined to be due, plus interest at the rate of 1.5 percent per month on the unpaid balance.

46025. (a) All products sold as organic in California shall be certified by a federally accredited certifying agent, if they are required to be certified under the federal act.

(b) Product shall be sold as organic only in accordance with this chapter.

(c) A certification organization shall be accredited by the USDA as provided in the NOP.

46026. Materials allowed in organic production and processing are specified in the Federal Organic Standards (7 C.F.R. Sec. 205 et seq.). Organic input materials for organic production are regulated under Chapter 5 (commencing with Section 14501) of Division 7.

#### Article 4. Fees and Penalties

46031. (a) The secretary, in consultation with the advisory committee, shall establish a registration fee for producers, handlers, and retail food establishments that are exempt from certification under the NOP but who are required to register with the state pursuant to Section 46021. The registration fee shall not exceed the reasonable costs of enforcement activities as authorized under Section 46012 on operations exempt from certification.

(b) The secretary, in consultation with the advisory committee, shall establish a registration fee for certifying agents operating within the state. The registration fee



shall not exceed the reasonable costs of enforcement and monitoring of certifying agents.

(c) The secretary, in consultation with the advisory committee, may establish an annual fee for the purposes of funding the activities authorized under this act. Any fee established shall not exceed the following fee schedule for gross annual organic sales amounts:

| Gross Annual Organic Sales | Annual Fee Amount |
|----------------------------|-------------------|
| \$ 0 - 250,000             | \$100             |
| \$ 250,001 - 500,000       | \$450             |
| \$ 500,001 - 1,000,000     | \$750             |
| \$ 1,000,001 - 2,500,000   | \$1,000           |
| \$ 2,500,001 - 5,000,000   | \$1,500           |
| \$ 5,000,001 - 15,000,000  | \$2,000           |
| \$ 15,000,001 - 25,000,000 | \$2,500           |
| \$ 25,000,001 and above    | \$3,000           |

46032. (a) The fees and penalties collected by the secretary and county agricultural commissioners pursuant to this chapter shall be deposited in the Department of Food and Agricultural Fund and, upon appropriation by the Legislature, shall be expended solely to fulfill the activities authorized under this chapter.

(b) By regulation, the secretary may establish procedures to allow any fees and penalties collected by a county agricultural commissioner pursuant to Section 46047 and any other penalties collected by a county agricultural commissioner pursuant to this chapter to be paid directly to the county agricultural commissioner and expended to fulfill the responsibilities of the county agricultural commissioner, as specified in this chapter.

(c) Any person subject to this chapter that does not pay the registration fee within 10 days of the date on which the fee is due and payable shall pay a penalty of 10 percent of the total amount determined to be due plus interest at the rate of 1.5 percent per month on the unpaid balance.

46033. (a) Any fee established and collected pursuant to this chapter shall not exceed the department's cost or the county agricultural commissioner's costs, as the case may be, of regulating and enforcing the provisions of this chapter related to the function for which the fee is established.

(b) The fees established and collected pursuant to this chapter may be expended, under the advisement of the advisory committee, for activities authorized under this chapter, including assisting operations in achieving certification, conducting education and outreach, entering research and development partnerships, and addressing production or marketing obstacles to the growth of the organic sector.

#### Article 5. Enforcement

46041. (a) This chapter shall apply notwithstanding any other law that is inconsistent with this chapter. Nothing in this chapter is intended to repeal any other law consistent with this chapter.

(b) Article 14 (commencing with Section 43031) of Chapter 2 applies to any product that is represented as organically produced by any person who is not registered as required by this chapter or any product that is not in compliance with this chapter or the NOP.

(c) The secretary, county agricultural commissioners, and the director shall be considered enforcing officers for purposes of those provisions of law under their respective jurisdiction.

(d) Any person may file a complaint with the director concerning suspected noncompliance with this chapter or Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code by a person under the enforcement jurisdiction of the director, as provided in Section 46000.

(e) The director shall, to the extent funds are available, establish procedures for handling complaints, including provision of a written complaint form, and procedures for commencing an investigation within three working days after receiving a complaint regarding fresh food, and within seven working days for other food, and completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 60 days thereafter.

(f) The director may establish minimum information requirements to determine the verifiability of a complaint, and may provide for rejection of a complaint that does not meet the requirements. The director shall provide written notice of the reasons for rejection to the person filing the complaint.

(g) The director shall carry out the functions and objectives of this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, to the extent funds are available for those purposes.

46042. At the request of a county agricultural commissioner, the district attorney for that county may bring an action to enforce this act within the enforcement jurisdiction of that commissioner.

46043. (a) Any person may file a complaint with the secretary concerning suspected noncompliance with this act, as provided in regulations adopted by the NOP.

(b) The secretary shall, to the extent funds are available, establish procedures for handling complaints, including provision of a written complaint form, and procedures for commencing an investigation within three working days after receiving a complaint regarding fresh food, and within seven working days for other products, and completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 60 days thereafter.

(c) The secretary may establish minimum information requirements to determine the verifiability of a complaint, and may provide for rejection of a complaint that does not meet the requirements. The secretary shall provide written notice of the reasons for rejection to the person filing the complaint.

(d) The secretary shall carry out the functions and objectives of this chapter to the extent funds are available for those purposes.

(e) The complaint process in this state must also meet all the complaint process outlined in regulations adopted by the NOP.

46044. (a) A county agricultural commissioner may, at any time, initiate a notice and hearing process to determine whether a violation of these provisions has occurred. The hearing process to determine if a violation has occurred may include a review of the actions or records of all of the following:

- (1) The organic registrant.
- (2) A family member, employee, or any other person authorized to act on behalf of the registrant.
- (3) Any other person whose actions may have resulted in the violation.
- (b) The notice of hearing shall be on a form approved by the secretary that contains all of the following:
  - (1) The reasons why the hearing is being held.
  - (2) A warning that failure to participate may result in other adverse actions or may be considered to be admission to a possible violation.
  - (3) A hearing date, time, and location of the hearing.
  - (4) The secretary or county agricultural commissioner may, upon determination that a violation has been made in accordance with subdivision (a), take any corrective action as specified in this act.

46045. (a) Any person may appeal to the secretary for a hearing if aggrieved by either of the following actions or decisions:

- (1) Denial of any registration.
- (2) Revocation of any registration.
- (b) The appeal shall be submitted to the secretary in writing within 30 days of the date the action, or the letter proposing the action. The secretary's proceeding shall, insofar as practicable, comply with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), except that a department hearing officer may be used.

46046. As provided for in regulations adopted by the NOP, the action proposed by a NOP accredited certifier against a client may be appealed to the secretary for mediation.

46047. (a) In lieu of prosecution, the secretary or a county agricultural commissioner may levy an administrative penalty against any person under the enforcement jurisdiction of the secretary as provided in Section 46000 who violates this act, or any regulation adopted pursuant thereto or pursuant to this chapter, or regulations adopted by the NOP, in an amount not more than five thousand dollars (\$5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this chapter and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the secretary or county agricultural commissioner finds that a violation was not intentional, the secretary or county agricultural commissioner may levy an administrative penalty of not more than two thousand five hundred dollars (\$2,500) for each violation.

(c) For a first offense, in lieu of an administrative penalty as prescribed in subdivision (a) or (b), the secretary or county agricultural commissioner may issue a notice of violation if he or she finds that the violation is minor.

(d) A person against whom an administrative penalty is proposed shall be afforded an opportunity for a hearing before the secretary or county agricultural commissioner, upon request made in writing within 30 days after the issuance of the notice of penalty. At the hearing, the person shall be given the right to review the secretary's or commissioner's evidence of the violation and the right to present evidence on his or

her own behalf. If no hearing is requested, the administrative penalty shall constitute a final and nonreviewable order.

(e) If a hearing is held, review of the final decision of the secretary or county agricultural commissioner may be requested in writing by any person, pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of the final order of the secretary or county agricultural commissioner.

(f) An administrative penalty levied by the secretary pursuant to this section may be recovered in a civil action brought in the name of the state. An administrative penalty levied by a county agricultural commissioner pursuant to this section may be recovered in a civil action brought in the name of the county. After the exhaustion of the review procedures provided in this section, a county agricultural commissioner, or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of an administrative penalty and, if applicable, a copy of any order that denies a petition for a writ of administrative mandamus with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. Pursuant to Section 6103 of the Government Code, no fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(g) The secretary shall maintain in a central location, and make publicly available for inspection and copying upon request, a list of all administrative penalties levied by the secretary and by each county agricultural commissioner within the past five years, including the amount of each penalty, the person against whom the penalty was levied, and the nature of the violation. Copies of this list shall also be available by mail, upon written request and payment of a reasonable fee, as set by the secretary.

46048. The secretary and the county agricultural commissioners may conduct a program of spot inspections to determine compliance with this act.

46049. (a) It is unlawful for any person to sell, offer for sale, advertise, or label any product in violation of this act.

(b) Notwithstanding subdivision (a), a person engaged in business as a handler, distributor, or retailer of food who in good faith sells, offers for sale, labels, or advertises any product in reliance on the representations of a producer, processor, or other distributor that the product may be sold as organic, shall not be found to violate this act unless the distributor either:

(1) Knew or should have known that the product could not be sold as organic.

(2) Was engaged in producing or processing the product.

(3) Prescribed or specified the manner in which the product was produced or processed.

46050. (a) It is unlawful for any person to certify any product in violation of this act.

(b) It is unlawful for any person to certify a product or company as organic unless duly registered as a certification organization pursuant to this act.

(c) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration for a certification organization pursuant to this act.

46051. (a) It is unlawful for any person to produce or handle any product sold as organic unless duly registered pursuant to Section 46021.

(b) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration pursuant to Section 46021.

46052. It is unlawful for any person to forge, falsify, fail to retain, fail to obtain, or fail to disclose records pursuant to Section 46055.

46053. (a) It is unlawful for any person to advertise, label, or otherwise represent that any fertilizer or pesticide chemical may be used in connection with the production, processing, or distribution of products sold as organic if that fertilizer or pesticide chemical contains a prohibited material.

(b) It is unlawful for any person to refuse to submit for inspection.

(c) It is unlawful for any person to mislabel any organic product.

(d) It is unlawful for any person to alter any organic registration form.

(e) It is unlawful for any person to alter any certification document.

(f) It is unlawful for any person to falsify any document.

(g) It is unlawful for any person to remove a hold off sale or disposal order from any lot of product.

(h) It is unlawful to use the term "transitional organic" in this state.

46054. No food or product may be advertised or labeled as "organic when available" or similar terminology that leaves in doubt whether the food is being sold as organic.

46055. All persons who produce, handle, or retail products that are sold as organic shall keep accurate and specific records of the following as applicable:

(a) The quantity harvested from each field or management unit, the size of the field or management unit, the field number, and the date of harvest.

(b) Unless the livestock, fowl, or fish was raised or hatched by the producer, the name and address of all suppliers of livestock, fowl, or fish and the date of the transaction.

(c) For each field or management unit, all substances applied to the crop, soil, growing medium, growing area, irrigation or post harvest wash or rinse water, or seed, the quantity of each substance applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.

(d) All substances administered and fed to the animal, including all feed, medication and drugs, and all substances applied in any area in which the animal, milk, or eggs are kept, including the quantity administered or applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.

(e) (1) Invoices, bills of lading or other documents that show transfer of title of certified organic products shall indicate the product is "organic" or "certified organic" and, if applicable, the California registration number of the person transferring the product.

(2) Any person selling product that is exempt or excluded from certification under NOP rules, must follow the requirements of Section 205.101 of Title 7 of the Code of Federal Regulations.

(f) All substances applied to the product or used in or around any area where product is kept including the quantity applied and the date of each application. All pesticide chemicals shall be identified by brand name, if any, and by source.

(g) Except when sold to the consumer, the name and address of all persons, to whom or from whom the product is sold, purchased or otherwise transferred, the quantity of product sold or otherwise transferred, and the date of the transaction.

46056. (a) Notwithstanding any other law, any producer, handler, processor, or retailer of product sold as organic shall immediately make available for inspection by, and shall upon request, within 72 hours of the request, provide a copy to, the secretary, the Attorney General, any prosecuting attorney, any governmental agency responsible for enforcing laws related to the production or handling of products sold as organic, of any record required to be kept under this section for purposes of carrying out this chapter. Records acquired pursuant to this chapter shall not be public records as that term is defined in Section 6252 of the Government Code and shall not be subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Upon written request of any person that establishes cause for the request, the secretary shall obtain and provide to the requesting party within 10 working days of the request a copy of any of the following records required to be kept under this chapter that pertain to a specific product sold or offered for sale, and that identify substances applied, administered, or added to that product, except that financial information about an operation or transaction, information regarding the quantity of a substance administered or applied, the date of each administration or application, information regarding the identity of suppliers or customers, and the quantity or price of supplies purchased or products sold shall be removed before disclosure and shall not be released to any person other than persons and agencies authorized to acquire records under subdivision (a):

(1) Records of a producer, as described in Section 46056.

(2) Records of a handler, as described in Section 46056, records of previous handlers, if any, and producers as described in Section 46056 without identifying the previous handlers or producers, and, if applicable, records obtained as required in this act.

(3) (A) Records of a retailer, as described in Section 46056, records of previous handlers, if any, and producers as described in Section 46056 without identifying the previous processors, handlers, or producers, and, if applicable, records obtained as required in subdivision (d). This subdivision shall be the exclusive means of public access to records required to be kept by producers, processors, handlers, and retailers under this chapter.

(B) A person required to provide records pursuant to a request under this subdivision, may petition the secretary to deny the request based on a finding that the request is of a frivolous or harassing nature. The secretary may, upon the issuance of this finding, waive the information production requirements of this subdivision for the specific request for information that was the subject of the petition.

(c) Information specified in subdivision (b) that is required to be released upon request shall not be considered a "trade secret" under Section 110165, Section 1060 of the Evidence Code, or the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code).

(d) The secretary may charge the person requesting records a reasonable fee to reimburse himself or herself or the source of the records for the cost of reproducing the records requested.

(e) The secretary shall not be required to obtain records not in his or her possession in response to a subpoena. Before releasing records required to be kept pursuant to this act in response to a subpoena, the secretary shall delete any information regarding the identity of suppliers or customers and the quantity or price of supplies purchased or products sold.

SEC. 4. Section 110810 of the Health and Safety Code is amended to read:

110810. This article ~~and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code shall be known, known~~ and may be cited ~~as, as~~ the California Organic Products Act of 2003, Food and Farming Act.

SEC. 5. Section 110812 of the Health and Safety Code is amended to read:

110812. ~~The director~~ director, in consultation with the Secretary of Food and Agriculture, shall enforce regulations promulgated by the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), provisions of this article, and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code.

SEC. 6. Section 110815 of the Health and Safety Code is repealed.

~~110815. Unless otherwise defined pursuant to the National Organic Program, the following words and phrases, when used in this article, shall have the following meanings:~~

(a) ~~“Animal food” means any food intended to be fed to any household animal, including, but not limited to, cats, or dogs and other carnivores. It does not include “feed” intended for livestock as defined in Section 205.2 of Title 7 of the Code of Federal Regulations.~~

(b) ~~“Director” means the Director of the Department of Health Services.~~

(c) ~~“Enforcement authority” means the governmental unit with primary enforcement jurisdiction, as provided in Section 110930.~~

(d) ~~“Handle” means to sell, process, or package agricultural products.~~

(e) ~~“Handler” means any person engaged in the business of handling agricultural products, but does not include final retailers of agricultural products that do not process agricultural products.~~

(f) ~~“Handling operation” means any operation or portion of an operation, except final retailers of agricultural products that do not process agricultural products, that (1) receives or otherwise acquires agricultural products and (2) processes, packages, or stores agricultural products.~~

(g) ~~“NOP” means the National Organic Program established pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted for implementation.~~

(h) ~~“Processing” means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes packaging, canning, jarring, or otherwise enclosing food in a container.~~

(i) ~~“Prohibited materials” means any materials prohibited under regulations adopted by (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)). For products not covered by the National Organic Program, prohibited materials are anything not on the approved list.~~

(j) ~~“Secretary” means the Secretary of the California Department of Food and Agriculture.~~

(k) "Sold as organic" means any use of the terms "organic," "organically grown," or grammatical variations of those terms, whether orally or in writing, in connection with any product grown, handled, processed, sold, or offered for sale in this state, including, but not limited to, any use of these terms in labeling or advertising of any product and any ingredient in a multi-ingredient product.

(l) "USDA" means the United States Department of Agriculture.

SEC. 7. Section 110815 is added to the Health and Safety Code, to read:

110815. The definitions set forth in Section 46001 of the Food and Agricultural Code shall apply to this article.

SEC. 8. Section 110860 of the Health and Safety Code is amended to read:

~~110860. (a) A registered certification organization shall no less often than, at the end of each calendar quarter, prepare a list by name of all persons whose production or processing of food is certified or pending certification by the certification organization. This list shall be filed with the department or the Department of Food and Agriculture, as applicable, by the certification organization and made publicly available within 30 days after the end of each quarter.~~

~~(b)~~

110860. A registered certification organization or a federally accredited certification organization shall, at least annually, physically inspect the premises where the food to be certified is produced and processed. The inspection shall include an examination of recordkeeping.

SEC. 9. Section 110870 of the Health and Safety Code is repealed.

~~110870. Only products that have been handled and processed in accordance with this article may be certified by a registered certification organization.~~

SEC. 10. Section 110875 of the Health and Safety Code is repealed.

~~110875. (a) Every person engaged in this state in the processing or handling of processed products for human consumption, including dietary supplements, alcoholic beverages, and fish or seafood sold as organic (except for processors and handlers of processed meat, fowl, or dairy products and retailers that are engaged in the processing or handling of products sold as organic), and every person engaged in the processing or handling of animal food and cosmetics sold as organic, shall register with the director, and shall thereafter annually renew the registration unless no longer so engaged. Handlers of processed food products that are registered with the department pursuant to Article 2 (commencing with Section 110460) shall register under this section in conjunction with the annual renewal of their registration pursuant to that article. Handlers of organic products that are required to be registered to manufacture, pack, or hold processed food pursuant to Article 2 (commencing with Section 110460) of Chapter 5 of Part 5 of Division 104, licensed to bottle, vend, haul, or process water pursuant to Article 12 (commencing with Section 11070) of Chapter 5 of Part 5 of Division 104, certified to process or handle fresh or frozen seafood or fresh or frozen raw shellfish pursuant to Chapter 5 (commencing with Section 112150) of Part 6 of Division 104, licensed to operate a cold storage facility pursuant to Chapter 6 (commencing with Section 112350) of Part 6 of Division 104, licensed to process low acid canned foods pursuant to Chapter 8 (commencing with Section 112650) of Part 6 of Division 104, licensed to manufacture olive oil pursuant to Chapter 9 (commencing with Section 112875) of Part 6 of Division 104, and licensed or registered to process or hold pet food in California pursuant to Chapter 10 (commencing with Section~~



113025) of Part 6 of Division 104, shall possess a valid registration or license in order to obtain a valid organic registration for the same facility under this section. All others required to register under this subdivision shall register within 30 days of forms being made available for this purpose. Any processor or handler of processed products required to register under this subdivision that does not pay the registration fee required by subdivision (c) within 30 days of the date on which the fee is due and payable shall pay a penalty of 1½ percent per month on the unpaid balance.

(b) Registration shall be on a form provided by the director and shall be valid for a period of one calendar year from the date of validation of the completed registration form. The director shall make registration forms available for this purpose. The information provided on the registration form shall include all of the following:

(1) The nature of the registrant's business, including the specific commodities and quantities of each commodity that is handled and sold as organic.

(2) The total current annual organic gross sales, or if not selling the product, the total current gross annual revenue received from processing, packaging, repackaging, labeling, or otherwise handling organic products for others, in dollars.

(3) The names of all certification organizations and governmental entities, if any, providing certification to the registrant pursuant to this article and the regulations adopted by the NOP.

(4) Sufficient information, under penalty of perjury, to enable the director to verify the amount of the registration fee to be paid in accordance with subdivision (c).

(e) To the extent feasible, the director shall coordinate the registration and fee collection procedures of this section with similar licensing or registration procedures applicable to registrants. When coordinating the organic registration with other required registrations or licenses identified in subdivision (a), the expiration date shall be the same expiration date as the valid license or registration. For persons that hold two-year licenses or registrations pursuant to subdivision (a), the organic registration shall be renewed annually using the same expiration month and day as the two-year license or registration.

(d) A registration form shall be accompanied by payment of a nonrefundable registration fee payable to the department by handlers which shall be based on annual gross sales of organic product or annual revenue received from processing, packaging, repackaging, labeling, or otherwise handling organic product for others, by the registrant in the calendar year that precedes the date of registration. If no sales or revenue were made in the preceding year, then based on the expected sales or revenue during the 12 calendar months following the date of registration. Unless specified elsewhere, the fee is based according to the following schedule:

1

| Gross Annual Sales or Revenue | Annual Registration Fee |
|-------------------------------|-------------------------|
| \$0-\$5,000                   | \$ 50                   |
| \$5,001-\$50,000              | \$100                   |
| \$50,001-\$125,000            | \$200                   |
| \$125,001-\$250,000           | \$300                   |
| \$250,001-\$500,000           | \$400                   |

| Gross Annual Sales or<br>Revenue   | Annual Registration<br>Fee |
|------------------------------------|----------------------------|
| <del>\$500,001–\$1,500,000</del>   | \$500                      |
| <del>\$1,500,001–\$2,500,000</del> | \$600                      |
| <del>\$2,500,001–and above</del>   | \$700                      |

~~(1) Any handler that does not take possession or title of the product but arranges for the sale of the product shall register and pay one hundred dollars (\$100) per year.~~

~~(2) Any person that only provides temporary storage for seven days or less, or only provides transportation for organic product and does not handle the processed packaged product, does not have to register.~~

~~(3) Any person that hires any other person to custom pack, repack, or label organic products shall register and pay a fee based on the total annual sales of products custom packed, repacked, or labeled for them as outlined in the chart above.~~

~~(e) Revenue received pursuant to this section shall be deposited in the Food Safety Fund created pursuant to Section 110050.~~

~~(f) The director shall reject a registration submission that is incomplete or not in compliance with this article and regulations promulgated by the NOP.~~

~~(g) The director shall provide a validated certificate to the registrant.~~

~~(h) Registration forms shall be made available to the public for inspection and copying at the main office of the department. Copies of registration forms shall also be made available by mail, upon written request and payment of a reasonable fee, as determined by the director. Registration information regarding quantity of products sold and gross sales volume in dollars shall be deleted prior to public inspection and copying and shall not be released to any person except other employees of the department, the Department of Food and Agriculture, a county agricultural commissioner, the Attorney General, any prosecuting attorney, or any government agency responsible for enforcing laws related to the activities of the person subject to this part.~~

~~(i) A registrant shall immediately notify the director of any change in the information reported on the registration form and shall pay any additional fee owed if that change results in a higher fee owed than previously paid.~~

~~(j) The director in consultation with the California Organic Products Advisory Committee, may suspend the registration program set forth in this section if the director determines that income derived from registration fees is insufficient to support a registration enforcement program.~~

~~(k) A registration is considered legal and valid until revoked, suspended, or until the expiration of the registration.~~

~~(l) The registration revocation process must be in conjunction with other provisions of this article. The director can initiate the revocation process for failure to comply with this article or any part of the regulations adopted pursuant to the NOP. Any person against whom the action is being taken shall have the opportunity to appeal the action and be afforded the opportunity to be heard in an administrative appeal. This appeal can be administered by either the state or county agricultural commissioner's office.~~

~~(m) When the registration fee is not paid within 60 days from the expiration date the account may be considered closed and the registration voided. A notification~~

will be sent to the registrant and the certifier will notify them that they are no longer able to market products as organic until the account is paid in full.

~~(n) Any registration that is more than 60 days late will be considered invalid and it is a violation if product is sold as organic.~~

SEC. 11. Section 110875 is added to the Health and Safety Code, to read:

110875. A person certified under the National Organic Program shall be deemed registered for the purposes of the state organic program, and shall not be required to separately register with the state.

SEC. 12. Section 110920 of the Health and Safety Code is amended to read:

110920. ~~No~~ (a) The department shall use funds appropriated by the Legislature in the annual Budget Act from fees collected pursuant to Section 46031 of the Food and Agricultural Code to fulfill its obligations under this article.

(b) No fee established and collected pursuant to this article shall exceed the department's costs of regulating and enforcing the provisions of this article related to the function for which the fee is established.

SEC. 13. Section 110925 of the Health and Safety Code is amended to read:

110925. Any fees and civil penalties collected pursuant to this article shall be deposited in the ~~General Fund~~ a separate organic food safety subaccount of the Food Safety Account and, upon appropriation by the Legislature, shall be expended to fulfill the responsibilities of the director as specified in this article.

SEC. 14. Section 110958 of the Health and Safety Code is repealed.

~~110958. Annually, the director shall compile and publish and submit to the California Organic Products Advisory Committee a summary of information collected under Section 110875, including, but not limited to, the following:~~

~~(a) The total number of registrations received under this section.~~

~~(b) The total number and quantity of each type of product sold as organic by all registrants combined.~~

~~(c) The total annual organic gross sales volume or revenue of all registrants combined, and the median gross annual organic sales or revenue of all registrants.~~

~~(d) The names of all registrants.~~

~~(e) The number of registrants in each of the following ranges of annual gross sales volume:~~

~~(1) \$0-\$5,000~~

~~(2) \$5,001-\$25,000~~

~~(3) \$25,001-\$50,000~~

~~(4) \$50,001-\$125,000~~

~~(5) \$125,001-\$250,000~~

~~(6) \$250,001-\$500,000~~

~~(7) \$500,001-\$750,000~~

~~(8) \$750,001-\$1,000,000~~

~~(9) \$1,000,001-\$1,500,000~~

~~(10) \$1,500,001-\$2,500,000~~

~~(11) \$2,500,001-\$10,000,000~~

~~(12) \$10,000,001-\$30,000,000~~

~~(13) \$30,000,001 and above.~~

~~(f) The report published pursuant to this section shall present the required information in an aggregate form that preserves the confidentiality of the proprietary information of individual registrants.~~

SEC. 15. Section 110958 is added to the Health and Safety Code, to read:

110958. (a) Annually, the department shall compile, publish, and submit to the California Organic Products Advisory Committee a summary of the following information:

(1) Enforcement actions taken by the department in that fiscal year.

(2) Accounting revenues received and expended by the department in implementing this article.

(b) The information shall be presented in an aggregate form that preserves the confidentiality of proprietary information of individual businesses.

SEC. 16. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Amendment 5

On page 1, strike out lines 1 to 9, inclusive, and strike out page 2