

2 State of Arkansas
3 88th General Assembly
4 Regular Session, 2011

As Engrossed: S3/14/11
A Bill

SENATE BILL 820

5
6 By: Senator J. Jeffress
7 By: Representatives Hyde, Moore, Love

8 Filed with: Interim Senate Committee on Agriculture, Forestry and Economic Development
9 pursuant to A.C.A. §10-3-217.

10 **For An Act To Be Entitled**

11 AN ACT TO REGULATE THE LABELING AND MARKETING OF
12 PRODUCE AND OTHER AGRICULTURAL PRODUCTS; TO DEFINE
13 "FARMERS' MARKET"; TO REQUIRE CERTIFICATION OF
14 FARMERS' MARKETS; TO AMEND THE SALES TAX EXEMPTION
15 FOR FARMERS' MARKETS; TO MAKE TECHNICAL CORRECTIONS;
16 AND FOR OTHER PURPOSES.

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18
19 **Subtitle**

20 TO REGULATE THE LABELING AND MARKETING OF
21 PRODUCE AND OTHER AGRICULTURAL PRODUCTS;
22 TO DEFINE "FARMERS' MARKET"; TO REQUIRE
23 CERTIFICATION OF FARMERS' MARKETS; AND TO
24 AMEND THE SALES TAX EXEMPTION FOR
25 FARMERS' MARKETS.

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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29
30 SECTION 1. Arkansas Code Title 2, Chapter 20, is amended to add an
31 additional subchapter to read as follows:

32 Subchapter 9 – Produce Labeling Act

33 2-20-901. Title.

34 This subchapter shall be known and may be cited as the "Produce
35 Labeling Act".

1 2-20-902. Definitions.

2 As used in this subchapter:

3 (1) “Farm of origin” means the farm on which the produce was
4 grown;

5 (2) “Farmers’ market” means a market certified by the Arkansas
6 Agriculture Department under § 2-20-1002;

7 (3) “Produce” means a fresh fruit or vegetable; and

8 (4) “Produce market” means a market that:

9 (A) Offers produce for sale; and

10 (B) Is not a farmers’ market.

11
12 2-20-903. Labeling required.

13 (a) Produce sold at a produce market shall be labeled according to the
14 following:

15 (1) All produce offered for sale shall have a stamp or label
16 that identifies its farm of origin and is affixed to the:

17 (A) Individual piece of produce; or

18 (B) Container or package, if the produce is not sold
19 individually;

20 (2) If the produce is being resold and the farm of origin is not
21 known, the produce shall include a label noting “Produce Sold as Resale”.

22 (b)(1)(A) A person selling produce at a farmers’ market shall display
23 a sign or banner at the person’s booth stating the name and location of the
24 farm of origin.

25 (B) If the produce being sold at a booth has more than one
26 (1) farm of origin, the sign or banner shall:

27 (i) State the name and location of each farm of
28 origin; and

29 (ii) Identify by type the produce grown on each farm
30 of origin.

31 (2) However, if a person selling produce at a farmers’ market
32 does not display a sign or banner identifying the farm of origin of the
33 produce being sold, then the produce shall be labeled under the requirements
34 of subdivision (a)(1) of this section.

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36 2-20-904. Rules.

1 The Arkansas Agriculture Department shall adopt rules to implement this
2 subchapter.

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4 SECTION 2. Arkansas Code Title 2, Chapter 20, is amended to add an
5 additional subchapter to read as follows:

6 Subchapter 10 – Certified Farmers’ Markets

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8 2-20-1001. Definitions.

9 As used in this subchapter:

10 (1)(A) “Agricultural products” means agricultural,
11 horticultural, viticultural, and aquacultural commodities, including without
12 limitation the following:

13 (i) Fresh fruits, nuts, vegetables, shell eggs,
14 honey, flowers, and nursery stock;

15 (ii) Field crops, including without limitation rice,
16 soybeans, cotton, sorghum, corn, and wheat;

17 (iii) Meat, poultry, fish, and other livestock
18 products; and

19 (iv) Products from any tree, vine, or plant or the
20 flower of any tree, vine, or plant.

21 (B) “Agricultural products” includes processed
22 agricultural, horticultural, viticultural, and aquacultural commodities;

23 (2) “Farmers’ market” means a market certified by the Arkansas
24 Agriculture Department under this subchapter;

25 (3) “Locally produced arts and crafts” means an art or craft
26 that is composed primarily of agricultural products and that is primarily
27 produced in the state or within one hundred fifty (150) miles of the market
28 at which it is sold;

29 (4) “Operator” means the person or entity that owns, operates,
30 or is otherwise empowered to implement the rules, regulations, and policies
31 of a market; and

32 (5) “Producer” means a person or entity that produces
33 agricultural products on land that the person or a separate entity owns or
34 controls.

1 2-20-1002. Farmers' markets – Certification – Restriction on use of
2 “farmers’ market”.

3 (a) A market may be certified as a farmers’ market only if the market:

4 (1) Sells agricultural products directly to the user of the
5 agricultural products;

6 (2) Is composed only of producers of agricultural products that
7 are:

8 (A) Offered for sale; and

9 (B) Grown or made by the producer within the state or
10 within one hundred fifty (150) miles of the market;

11 (3) Is operated seasonally; and

12 (4)(A) Is held out-of-doors or in a public space.

13 (B) However, a market that consists only of online sellers
14 who otherwise satisfy the requirements of this section may be certified as a
15 farmers’ market.

16 (b)(1) To become certified as a farmers’ market, the operator of the
17 market shall apply to the Arkansas Agriculture Department using the form
18 authorized by the department under this subchapter.

19 (2) The department may require an application fee to cover the
20 costs associated with processing the application.

21 (c)(1) Upon determining that an applicant meets the requirements for
22 operating a farmers’ market, the department shall issue the operator a
23 certificate that identifies the market as a certified farmers’ market and
24 includes without limitation the following information:

25 (A) The name of the operator;

26 (B) The name of the market;

27 (C) The location of the market; and

28 (D) The expiration date of the certificate.

29 (2) The certificate issued under this section shall be:

30 (A) Valid for twelve (12) months from the date of issue;

31 and

32 (B) Renewed as prescribed by the department.

33 (d) An operator of a market shall not identify his or her market as a
34 farmers’ market unless the operator has received a certificate under this
35 section.

1 (e)(1) An operator of a certified farmers' market may designate a
2 separate section of the market for the sale of locally produced arts and
3 crafts only if the operator clearly designates the market as a farmers'
4 market and arts and crafts market.

5 (2)(A) The requirement under subdivision (e)(1) of this section
6 is satisfied if the operator's primary sign designates the market as a
7 farmers' market and arts and crafts market.

8 (B) The display of a certificate certifying that the
9 market is a farmers' market does not satisfy the requirement under
10 subdivision (e)(1) of this section.

11
12 2-20-1003. Certificate of certified farmers' market.

13 Upon receiving a certificate from the Arkansas Agriculture Department
14 certifying the market as a farmers' market, the operator of the market shall
15 display a copy of the certificate in a prominent location in the market.

16
17 2-20-1004. Responsibility of operators – Responsibility of sellers.

18 (a) It is the operator's responsibility to ensure that each person
19 participating in the sale of agricultural products in the farmers' market is
20 a producer of an agricultural product that was grown or made by the producer
21 within the state or within one hundred fifty (150) miles of the market.

22 (b)(1) At the beginning of each market season, one (1) person from
23 each farm of origin participating in the sale of agricultural products at the
24 farmers' market shall provide to the market operator an itemized list of all
25 products to be sold by the person at the farmers' market.

26 (2) The list shall state:

27 (A) The name of the producer;

28 (B) The location where each product was grown or made;

29 (C) The identity of each product to be sold; and

30 (D) The quantity of each product to be sold.

31 (3) The operator shall keep a copy of each list on file for a
32 period of two (2) years.

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34 2-20-1005. Rules.

35 The Arkansas Agriculture Department shall adopt rules to implement this
36 subchapter.

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SECTION 3. Arkansas Code § 26-52-401(18), concerning exemptions to the gross receipts tax for various products and services, is amended to read as follows:

(18)(A) Gross receipts or gross proceeds derived from the sale of:

(i) Any cotton or seed cotton or lint cotton or baled cotton, whether compressed or not, or cotton seed in its original condition;

(ii) Seed for use in the commercial production of an agricultural product or of seed;

(iii) Raw products from the farm, orchard, or garden, when the sale is made by the producer of the raw products directly to the consumer and user, including without limitation the sale of raw products from a farm, orchard, or garden that are produced and sold by the producer of the raw products at a farmers' market, including without limitation cut or dried flowers, plants, vegetables, fruits, nuts, and herbs;

(iv) Livestock, poultry, poultry products, and dairy products of producers owning not more than five (5) cows; and

(v) Baby chickens.

(B)(i) An exemption granted by this subdivision (18) ~~shall~~ does not apply when the articles are sold at or from an established business, even though sold by the producer of the articles.

(ii) A farmers' market is not an established business. ~~if the farmers' market sells raw product directly to the user of the raw product and the farmers' market is:~~

~~(a) Comprised of one (1) or more producers of a raw product;~~

~~(b) Operated seasonally; and~~

~~(c) Held out of doors or in a public space.~~

(C)(i) However, ~~nothing in~~ subdivision (18)(B) of this section ~~shall be construed to mean~~ does not mean that the gross receipts or gross proceeds received by the producer from the sale of the products mentioned in this subdivision (18) ~~shall be~~ are taxable when the producer sells commodities produced on his or her farm at an established business located on his or her farm.

1 (ii) ~~The provisions of this~~ This subdivision (18)
2 ~~are intended to exempt~~ exempts the sale by livestock producers of livestock
3 sold at special livestock sales.

4 (iii) ~~The provisions of this subdivision (18) shall~~
5 ~~not be construed to~~ This subdivision (18) does not exempt sales of dairy
6 products by any other businesses.

7 (iv) ~~The provisions of this subdivision (18) shall~~
8 ~~not be construed to~~ This subdivision (18) does not exempt sales by florists
9 and nurserymen.

10 (D) As used in this subdivision (18), ~~“nurserymen”~~

11 (i) “Farmers’ market” means the same as defined in §
12 2-20-1001; and

13 (ii) “Nurserymen” does not include Christmas tree
14 farmers;

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16 /s/J. Jeffress
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33 Referred by the Arkansas Senate

34 Prepared by: JLL/VJF
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