

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

As Engrossed: S3/14/11
A Bill

SENATE BILL 820

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

For An Act To Be Entitled

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

Subtitle

17
18 TO REGULATE THE LABELING AND MARKETING OF
19 PRODUCE AND OTHER AGRICULTURAL PRODUCTS;
20 TO DEFINE "FARMERS' MARKET"; TO REQUIRE
21 CERTIFICATION OF FARMERS' MARKETS; AND TO
22 AMEND THE SALES TAX EXEMPTION FOR
23 FARMERS' MARKETS.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

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

30 Subchapter 9 – Produce Labeling Act

31 2-20-901. Title.

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

35 2-20-902. Definitions.

36 As used in this subchapter:



1 (1) "Farm of origin" means the farm on which the produce was
2 grown;

3 (2) "Farmers' market" means a market certified by the Arkansas
4 Agriculture Department under § 2-20-1002;

5 (3) "Produce" means a fresh fruit or vegetable; and

6 (4) "Produce market" means a market that:

7 (A) Offers produce for sale; and

8 (B) Is not a farmers' market.

9
10 2-20-903. Labeling required.

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

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

15 (A) Individual piece of produce; or

16 (B) Container or package, if the produce is not sold
17 individually;

18 (2) If the produce is being resold and the farm of origin is not
19 known, the produce shall include a label noting "Produce Sold as Resale".

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

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

25 (i) State the name and location of each farm of
26 origin; and

27 (ii) Identify by type the produce grown on each farm
28 of origin.

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

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34 2-20-904. Rules.

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

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

4 Subchapter 10 – Certified Farmers’ Markets

5
6 2-20-1001. Definitions.

7 As used in this subchapter:

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

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

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

15 (iii) Meat, poultry, fish, and other livestock
16 products; and

17 (iv) Products from any tree, vine, or plant or the
18 flower of any tree, vine, or plant.

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

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

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

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

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

33
34 2-20-1002. Farmers’ markets – Certification – Restriction on use of
35 “farmers’ market”.

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

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

3 (2) Is composed only of producers of agricultural products that
4 are:

5 (A) Offered for sale; and

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

8 (3) Is operated seasonally; and

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

10 (B) However, a market that consists only of online sellers
11 who otherwise satisfy the requirements of this section may be certified as a
12 farmers' market.

13 (b)(1) To become certified as a farmers' market, the operator of the
14 market shall apply to the Arkansas Agriculture Department using the form
15 authorized by the department under this subchapter.

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

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

22 (A) The name of the operator;

23 (B) The name of the market;

24 (C) The location of the market; and

25 (D) The expiration date of the certificate.

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

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

28 and

29 (B) Renewed as prescribed by the department.

30 (d) An operator of a market shall not identify his or her market as a
31 farmers' market unless the operator has received a certificate under this
32 section.

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

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

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

7
8 2-20-1003. Certificate of certified farmers' market.

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

12
13 2-20-1004. Responsibility of operators – Responsibility of sellers.

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

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

22 (2) The list shall state:

23 (A) The name of the producer;

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

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

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

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

29
30 2-20-1005. Rules.

31 The Arkansas Agriculture Department shall adopt rules to implement this
32 subchapter.

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

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

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

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

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

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

16 (v) Baby chickens.

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

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

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

25 ~~(b) Operated seasonally; and~~

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

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

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

36 (iii) ~~The provisions of this subdivision (18) shall~~

1 ~~not be construed to~~ This subdivision (18) does not exempt sales of dairy
2 products by any other businesses.

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

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

7 (i) “Farmers’ market” means the same as defined in §
8 2-20-1001; and

9 (ii) “Nurserymen” does not include Christmas tree
10 farmers;

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12 /s/J. Jeffress
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