

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 153

95TH GENERAL ASSEMBLY

2009

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## AN ACT

To repeal sections 265.525, 267.565, 267.600, 416.410, and 416.440, RSMo, and to enact in lieu thereof five new sections relating to the marketing of commodities.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 265.525, 267.565, 267.600, 416.410, and 416.440, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 265.525, 267.565, 267.600, 416.410, and 416.440, to read as follows:

265.525. 1. This section shall be known as the "Missouri Rice Certification Act".

2. As used in this section, the following terms shall mean:

(1) "Characteristics of commercial impact", characteristics determined by the rice advisory council under subsection 7 of this section that may adversely affect the marketability of rice in the event of commingling with other rice and may include, but are not limited to, those characteristics that cannot be visually identified without the aid of specialized equipment or testing, those characteristics that create a significant economic impact in their removal from commingled rice, and those characteristics whose removal from commingled rice is infeasible;

(2) "Council", the rice advisory council established in this section;

(3) "Department", the department of agriculture;

(4) "Director", the director of the department of agriculture;

(5) "End user", any company or corporation, **not to include a producer,** that [uses rice as a major ingredient in industrial food processing] **is a major**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 **industrial user of rice in food processing;**

18 (6) "Handler", any person, **not to include a producer**, engaged in this  
19 state in the business of **buying, marketing, drying, milling, or warehousing**  
20 rice, [including persons engaged in the drying, milling, or storing of rice];

21 (7) "Person", any individual, partnership, limited liability company,  
22 limited liability partnership, corporation, firm, company, or any other entity doing  
23 business in Missouri;

24 (8) "Producer", any person who produces, or causes to be produced, rice;

25 (9) "Rice", all rough or paddy rice or brown rice (*Oryza* species) produced  
26 in or shipped in Missouri, including rice produced for seed. It does not include  
27 wild rice (*Zizania aquatic* or *Zizania palustris*).

28 3. Except as provided by rules promulgated by the department, it shall be  
29 unlawful for any person to introduce, sell, plant, produce, harvest, transport,  
30 store, process, or otherwise handle rice identified as having characteristics of  
31 commercial impact.

32 4. There is hereby created within the department of agriculture the "Rice  
33 Advisory Council". The council shall be made up of the following ten members:

34 (1) The director, or his or her designee;

35 (2) Three members appointed by the director to include:

36 (a) An individual [representing handlers] **employed as or by a handler**  
37 in Missouri;

38 (b) An individual [representing end users] **employed as or by an end**  
39 **user**;

40 (c) An individual representing the biotechnology industry who is familiar  
41 with rice genetics;

42 (3) Six members appointed by the director as recommended by the  
43 Missouri Rice Research and Merchandising Council to include:

44 (a) Two producers, neither of whom shall be employed by or serve on the  
45 board of any rice mill or rice merchandiser;

46 (b) Two scientists employed by institutes of higher education in Missouri;

47 (c) A representative of rice mills operating in Missouri; and

48 (d) A representative of rice seed dealers.

49 5. Members of the council shall serve terms of three years in length except  
50 that the director shall be a permanent member of the council and the director  
51 shall stagger the terms of the initial appointments so that three members serve  
52 terms of two years, three members serve terms of three years, and three members

53 serve terms of four years. There is no limit to the number of terms a member  
54 may serve. Vacancies shall be filled in the same manner of representation as the  
55 original appointments.

56 6. The rice advisory council shall meet no less than twice annually as  
57 determined by the chairperson of the council, who shall be elected by the council  
58 at its first meeting and once every calendar year thereafter. Members of the  
59 council shall serve without compensation but shall be reimbursed for their actual  
60 and necessary expenses incurred in the performance of their duties.

61 7. The powers and duties of the rice advisory council shall include, but not  
62 be limited to, all of the following:

63 (1) Identifying rice varieties that have characteristics of commercial  
64 impact;

65 (2) Reviewing the efficacy of terms and conditions of identity preservation  
66 programs imposed on the planting, producing, harvesting, transporting, drying,  
67 storing, testing, or otherwise handling of rice identified using the most current  
68 industry standards and generally accepted scientific principles;

69 (3) Reviewing each rice variety identified as having characteristics of  
70 commercial impact not less often than every two years, or upon receipt of a  
71 petition from the purveyor of the rice;

72 (4) Making recommendations to the director on all matters pertaining to  
73 this section, including, but not limited to, enforcement of this section.

74 8. The department shall have the power to:

75 (1) Maintain the integrity and prevent the contamination of rice which  
76 has not been identified as having characteristics of commercial impact;

77 (2) Prevent the introduction of disease, weeds, or other pests that would  
78 adversely affect rice which has not been identified as having characteristics of  
79 commercial impact;

80 (3) Require that persons selling, offering for sale, or otherwise distributing  
81 seed for the production of rice identified as having characteristics of commercial  
82 impact, or that persons bringing rice identified as having characteristics of  
83 commercial impact into the state for processing, notify the department of the  
84 location of planting sites and the dates and procedures for planting, producing,  
85 harvesting, transporting, drying, storing, testing, or otherwise handling of rice  
86 identified as having characteristics of commercial impact;

87 (4) Require that persons receiving rice having been identified as having  
88 characteristics of commercial impact produced outside the state for processing

89 notify the department of the location of the receipt and the procedures for  
90 processing, transporting, drying, storing, testing, or otherwise handling the rice  
91 to prevent commercial impact to other rice and the spread of weeds, disease, or  
92 other pests;

93 (5) Enforce restrictions and prohibitions imposed by the department on  
94 the selling, planting, producing, harvesting, transporting, drying, storing, testing,  
95 processing, or otherwise handling of rice identified as having characteristics of  
96 commercial impact; and

97 (6) Investigate alleged violations of this section, issue notices of violation,  
98 provide for an appeals process for persons aggrieved by the provisions of this  
99 section, and impose penalties for violation of this section.

100 9. The department may establish and collect reasonable fees for any  
101 sampling and testing of rice that the department determines is necessary to  
102 implement the provisions of this section. Any such fees shall be reviewed by the  
103 rice advisory council.

104 10. The department shall promulgate rules to implement the provisions  
105 of this section. Any rule or portion of a rule, as that term is defined in section  
106 536.010, RSMo, that is created under the authority delegated in this section shall  
107 become effective only if it complies with and is subject to all of the provisions of  
108 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and  
109 chapter 536, RSMo, are nonseverable and if any of the powers vested with the  
110 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective  
111 date, or to disapprove and annul a rule are subsequently held unconstitutional,  
112 then the grant of rulemaking authority and any rule proposed or adopted after  
113 August 28, 2007, shall be invalid and void.

114 11. The department shall regularly report to the rice advisory council any  
115 findings of rice varieties that could potentially have characteristics of commercial  
116 impact.

117 12. If the rice advisory council determines that any rice variety with  
118 characteristics of commercial impact is documented as causing unreasonable  
119 adverse effects on the environment or public health, the council may issue  
120 recommendations to the department. Within sixty days of receiving any such  
121 recommendations from the council, the department shall hold a public hearing for  
122 the purpose of determining the nature and extent of commercial impact. Within  
123 thirty days of holding any such public hearing, the department shall issue a  
124 detailed opinion in response to the council recommendations.

125           13. The penalty for violating a provision of this section shall be no less  
126 than ten thousand dollars nor more than one hundred thousand dollars per day  
127 per violation.

128           14. If the department determines a person has violated any provision of  
129 this section, the department shall provide written notice to such person informing  
130 the person of the violation. The notice shall inform the person of the right to  
131 request an appeal. Nothing in this section shall prevent a person from seeking  
132 judicial relief in a court of competent jurisdiction.

133           15. The provisions of this section shall become effective one hundred  
134 eighty days from August 28, 2007.

135           16. The provisions of this section shall not be subject to the provisions of  
136 sections 610.010 to 610.200, RSMo.

          267.565. Unless the context requires otherwise, as used in sections  
2 267.560 to 267.660, the following terms mean:

3           (1) "Accredited approved veterinarian", a veterinarian who has been  
4 accredited by the United States Department of Agriculture and approved by the  
5 state department of agriculture and who is duly licensed under the laws of  
6 Missouri to engage in the practice of veterinary medicine, or a veterinarian  
7 domiciled and practicing veterinary medicine in a state other than Missouri, duly  
8 licensed under laws of the state in which he resides, accredited by the United  
9 States Department of Agriculture, and approved by the chief livestock sanitary  
10 official of that state;

11           (2) "Animal", an animal of the equine, bovine, porcine, ovine, caprine, or  
12 species domesticated or semidomesticated;

13           (3) "Approved laboratory", a laboratory approved by the department;

14           (4) "Approved vaccine" or "bacterin", a vaccine or bacterin produced under  
15 the license of the United States Department of Agriculture and approved by the  
16 department for the immunization of animals against infectious and contagious  
17 disease;

18           (5) "Bird", a bird of the avian species;

19           (6) "Certified free herd", a herd of cattle, swine, goats or a flock of sheep  
20 or birds which has met the requirements and the conditions set forth in sections  
21 267.560 to 267.660 and as required by the department and as recommended by  
22 the United States Department of Agriculture, and for such status for a specific  
23 disease and for a herd of cattle, swine, goats or flock of sheep or birds in another  
24 state which has met those minimum requirements and conditions under the

25 supervision of the livestock sanitary authority of the state in which said animals  
26 or birds are domiciled, and as recommended by the United States Department of  
27 Agriculture for such status for a specific disease;

28       (7) **"Condition", upon examination of any animal or bird in this**  
29 **state by the state veterinarian or his or her duly authorized**  
30 **representative, the findings of which indicate the presence or**  
31 **suspected presence of a toxin in such animal or bird that warrants**  
32 **further examination or observation for confirmation of the presence or**  
33 **nonpresence of such toxin;**

34       (8) "Department" or "department of agriculture", the department of  
35 agriculture of the state of Missouri, and when by this law the said department of  
36 agriculture is charged to perform a duty, it shall be understood to authorize the  
37 performance of such duty by the director of agriculture of the state of Missouri,  
38 or by the state veterinarian of the state of Missouri or his duly authorized  
39 deputies acting under the supervision of the director of agriculture;

40       (9) **"Holding period", restriction of movement of animals or birds**  
41 **into or out of a premise under such terms and conditions as may be**  
42 **designated by order of the state veterinarian or his or her duly**  
43 **authorized representative prior to confirmation of a contagious disease**  
44 **or condition;**

45       [(8)] (10) "Infected animal" or "infected bird", an animal or bird which  
46 shows a positive reaction to any recognized serological test or growth on culture  
47 or any other recognized test for the detection of any disease of livestock or poultry  
48 as approved by the department or when clinical symptoms and history justifies  
49 designating such animal or bird as being infected with a contagious or infectious  
50 disease;

51       [(9)] (11) "Isolated" or "isolation", a condition in which animals or birds  
52 are quarantined to a certain designated premises and quarantined separately and  
53 apart from any other animals or birds on adjacent premises;

54       [(10)] (12) "Licensed market", a market as defined and licensed under  
55 chapter 277, RSMo;

56       [(11)] (13) "Livestock", horses, cattle, swine, sheep, goats, ratite birds  
57 including but not limited to ostrich and emu, aquatic products as defined in  
58 section 277.024, RSMo, llamas, alpaca, buffalo, elk documented as obtained from  
59 a legal source and not from the wild and raised in confinement for human  
60 consumption or animal husbandry, poultry and other domesticated animals or

61 birds;

62 [(12)] (14) "Official health certificate" is a legal record covering the  
63 requirements of the state of Missouri executed on an official form of the standard  
64 size from the state of origin and approved by the proper livestock sanitary official  
65 of the state of origin or an equivalent form provided by the United States  
66 Department of Agriculture and issued by an approved, accredited, licensed,  
67 graduate veterinarian;

68 [(13)] (15) "Public stockyards", any public stockyards located within the  
69 state of Missouri and subject to regulations of the United States Department of  
70 Agriculture or the Missouri department of agriculture;

71 [(14)] (16) "Quarantine", a condition in which an animal or bird of any  
72 species is restricted in movement to a particular premises under such terms and  
73 conditions as may be designated by order of the state veterinarian or his duly  
74 authorized deputies;

75 [(15)] (17) "Traders" or "dealers", any person, firm or corporation  
76 engaged in the business of buying, selling or exchange of livestock on any basis  
77 other than on a commission basis at any sale pen, concentration point, farm,  
78 truck or other conveyance including persons, firms or corporations employed as  
79 an agent of the vendor or purchaser excluding public stockyards under federal  
80 supervision or markets licensed under sections 267.560 to 267.660 and under the  
81 supervision of the department, breed association sales or any private farm sale.

267.600. 1. Animals, livestock or birds under test **or investigation** for  
2 a contagious and infectious disease **or condition** may not be removed from the  
3 premises until the results of the tests are known and the owner of such animals,  
4 livestock or birds receives a record of the test from the veterinarian certifying  
5 that the animals or birds are free of the disease **or specified condition** and  
6 until any infected animals or birds are sold for slaughter on permit and as may  
7 be required by the state veterinarian, or until such animals or birds are recovered  
8 and incapable of spreading the disease **or condition** or until the animals or  
9 birds in the herd or flock have been released by the state veterinarian or his  
10 representative. The method of eradicating the disease **or condition** shall be at  
11 the discretion of the state veterinarian and in accordance with such procedures  
12 as may be outlined by the state veterinarian or his representative.

13 2. **The state veterinarian or his or her representative may**  
14 **implement a holding period for the premise until the investigation and**  
15 **confirmation of the contagious and infectious disease or condition is**

16 **completed.**

17 **3. Once investigation and testing is complete, animals or birds**  
18 **shall be released from the holding period or placed under permanent**  
19 **quarantine by the state veterinarian or his or her representative.**

416.410. As used in sections 416.410 to 416.560 the following terms are  
2 construed to have the following meanings, except in those instances where the  
3 context clearly indicates otherwise:

4 (1) "Bulk milk", milk in bulk form, in cans, tank cars or tank trucks that  
5 is furnished to a processor for the purpose of processing and manufacture into  
6 milk products;

7 (2) "Bulk milk handler", any person engaged in the business of  
8 transferring title to bulk milk to a processor, except a cooperative association  
9 organized under the laws of this state;

10 (3) "Cost to the bulk milk handler", the price paid dairy farmers for the  
11 milk, plus receiving plant charge or a reasonable charge to cover all costs of  
12 operating his own receiving plant, plus transportation cost to the point of delivery  
13 to the purchaser;

14 (4) "Cost to the processor or distributor", the price paid for raw materials,  
15 plus the cost of doing business, which shall include labor, salaries paid executives  
16 and officers, rent, interest, depreciation, power, supplies, maintenance of  
17 equipment, selling costs, advertising, transportation and delivery costs, credit  
18 losses, all types of permits and license fees, all taxes, insurance, and all overhead  
19 expenses of the processor or distributor;

20 (5) "Cost to the retailer", the invoice price paid by the retailer plus the  
21 retailer's cost of doing business. In the absence of specific evidence the cost of  
22 doing business shall be presumed to be eight percent of the invoice price, and this  
23 cost shall be calculated to the nearest half cent per sales unit;

24 (6) "Director", the director of the department of agriculture;

25 (7) "Distributor", any person, other than a bulk milk handler, engaged in  
26 the business of transferring title within the state to milk products for a  
27 consideration, where the product is to be sold for resale or further processing;

28 (8) **"Imitation milk" and "Imitation milk products" those foods**  
29 **that have the physical characteristics, such as taste, flavor, body,**  
30 **texture, or appearance of milk products as defined in this chapter but**  
31 **do not meet the definition of milk or milk product;**

32 (9) "Market milk", milk disposed of in fluid form and which is approved



33 by an appropriate city, county or state health authority for distribution and sale  
34 in fluid form in any part of the state of Missouri;

35 **[(9)] (10) "Milk", the lacteal secretion, practically free of**  
36 **colostrum, obtained by the complete milking of one or more healthy**  
37 **cows or goats;**

38 **(11) "Milk products", market milk, pasteurized milk, vitamin D milk,**  
39 **homogenized milk, flavored milk [or flavored milk drinks], sweet cream, whipping**  
40 **cream, homogenized cream, skim milk, buttermilk, and cultured buttermilk,**  
41 **"milk products" do not include products such as evaporated milk,**  
42 **condensed milk, dietary products, infant formula, eggnog, dry milk**  
43 **products, packaged sports drinks, or packaged sports shakes;**

44 **[(10)] (12) "Nonprocessing retailer", any person, not a processor, engaged**  
45 **in the business of transferring title within the state to milk products for a**  
46 **consideration where such product is to be used or consumed by the purchaser and**  
47 **is not to be resold or used for the purpose of manufacture or further processing;**

48 **[(11)] (13) "Processor", any person engaged in the business of processing**  
49 **or packaging bulk milk or other materials into milk products.**

416.440. 1. No milk processor or distributor shall, with the intent or with  
2 the effect of unfairly diverting trade from a competitor, or of otherwise injuring  
3 a competitor, or of destroying competition, or of creating a monopoly, give or offer  
4 to give any milk product purchaser any rebate, discount, free service or services,  
5 advertising allowance, pay for advertising space used jointly, donation, free  
6 merchandise, rent on space used by the retailer for storing or displaying the milk  
7 processor's or distributor's merchandise, financial aid, free equipment, or any  
8 other thing of value[; except the bona fide return by a cooperative association to  
9 its members on a patronage basis of the savings realized on products sold and  
10 distributed to the members or patrons].

11 2. Proof of the giving or offer to give anything of value is prima facie  
12 evidence of a violation of this section.

13 3. **Notwithstanding any provision of law to the contrary, the**  
14 **economic benefits and services provided by a cooperative association**  
15 **to its members, including but not limited to the bona fide return on a**  
16 **patronage basis of the savings realized on products sold and**  
17 **distributed to the members or patrons, shall not be considered a**  
18 **violation of this section.**

19 4. No milk product purchaser shall accept from any milk processor or

20 distributor any rebate, discount, free service or services, any advertising  
21 allowance, pay for advertising space used jointly, donation, free merchandise, rent  
22 on space used by retailer for storing or displaying the milk processor's or  
23 distributor's merchandise, financial aid, free equipment, or any other thing of  
24 value[; except the bona fide receipt from a cooperative association of a patronage  
25 refund based on the patronage of the purchaser with the cooperative association].

26 [4.] 5. Proof of the acceptance of any thing of value by any milk product  
27 purchaser is prima facie evidence of the violation of this section.

28 **6. Notwithstanding any provision of law to the contrary, the bona**  
29 **fide receipt by a member of a cooperative association of the economic**  
30 **benefits and services provided by the cooperative to its members,**  
31 **including but not limited to receipt of a patronage refund based on the**  
32 **patronage of the purchaser with the cooperative association, shall not**  
33 **be considered a violation of this section.**

34 [5.] 7. This section does not prevent a processor or distributor from  
35 furnishing point-of-sale advertising material to a retailer without cost for the  
36 promotion of the sale of the processor's or distributor's products.

37 [6.] 8. This section does not prevent a discount of two percent or less for  
38 payment on or before a certain date.

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