

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2260 Session of
2010

INTRODUCED BY HOUGHTON, HANNA, BRADFORD, BRIGGS, SANTARSIERO,
BELFANTI, CALTAGIRONE, DALEY, DONATUCCI, FREEMAN, GEORGE,
GIBBONS, GOODMAN, HARHAI, HENNESSEY, HESS, HORNAMAN,
HUTCHINSON, JOSEPHS, KORTZ, KULA, LENTZ, LONGIETTI, MANN,
MARSHALL, McILVAINE SMITH, M. O'BRIEN, O'NEILL, PARKER,
PASHINSKI, PETRARCA, READSHAW, ROHRER, SAINATO, SANTONI,
SIPTROTH, K. SMITH, SOLOBAY, STURLA AND WHITE,
FEBRUARY 18, 2010

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, FEBRUARY
18, 2010

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, providing for the registration, licensing and use
3 of a Pennsylvania Preferred® trademark; establishing the
4 Pennsylvania Preferred® Trademark Licensing Fund; and
5 providing for penalties and for enforcement.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 3 of the Pennsylvania Consolidated Statutes
9 is amended by adding a chapter to read:

CHAPTER 46

PENNSYLVANIA PREFERRED® TRADEMARK

Sec.

§ 4601. Short title of chapter.

§ 4602. Declaration of policy.

§ 4603. Definitions.

§ 4604. Pennsylvania Preferred® trademark.

1 § 4605. Fees and costs.
2 § 4606. Establishment of fund.
3 § 4607. Disposition of funds.
4 § 4608. Duties and authority of department.
5 § 4609. Trademark license agreement, application and licensure
6 process.
7 § 4610. Pennsylvania-produced agricultural commodity or
8 agricultural product.
9 § 4611. Civil penalties.
10 § 4612. Injunctive relief.
11 § 4601. Short title of chapter.

12 This chapter shall be known and may be cited as the
13 Pennsylvania Preferred Act.

14 § 4602. Declaration of policy.

15 The General Assembly finds and declares as follows:

16 (1) The promotion of the production and consumption of
17 Pennsylvania-produced agricultural commodities and
18 agricultural products is of major economic interest in this
19 Commonwealth.

20 (2) It is the policy of the Commonwealth to maintain the
21 Pennsylvania Preferred® trademark as a uniform, recognizable
22 state-of-origin standard for Pennsylvania-produced
23 agricultural commodities and agricultural products that are
24 produced to all applicable production and quality standards
25 and to provide producers and marketers of these commodities
26 and products with the opportunity to make use of this
27 trademark for marketing purposes.

28 (3) It is the purpose of this chapter to provide the
29 department authority to implement this policy by authorizing
30 it to acquire, maintain and license the Pennsylvania

Preferred® trademark and to engage in cooperative
relationships and other activities in furtherance of
promoting commerce in Pennsylvania-produced agricultural
commodities and agricultural products that are licensed to
use this trademark.

§ 4603. Definitions.

The following words and terms when used in this chapter shall
have the meanings given to them in this section unless the
context clearly indicates otherwise:

"Agricultural commodity." As defined in section 4502
(relating to definitions).

"FDA." The Food and Drug Administration of the United States
Department of Health and Human Services.

"Fund." The Pennsylvania Preferred® Trademark Licensing Fund
established in section 4606 (relating to establishment of fund).

"Licensee." A qualified entity that is subject to a current
trademark license agreement with the Department of Agriculture,
addressing the conditions under which the qualified entity may
make commercial use of the Pennsylvania Preferred® trademark.

"Pennsylvania Preferred® trademark." One or more trademarks
that consist of the phrase "Pennsylvania Preferred" or "PA
Preferred," and that may include specific graphic designs or
artwork as part of the trademark registration.

"Person." An individual, partnership, corporation,
association or any other legal entity.

"Qualified entity." A person that produces, processes,
prepares, sells or is involved with any aspect of production,
processing, preparation or sale of Pennsylvania-produced
agricultural commodities or agricultural products.

"USDA." The United States Department of Agriculture.

1 § 4604. Pennsylvania Preferred® trademark.

2 The department shall take all actions necessary and
3 appropriate to acquire, create, register, maintain, license,
4 promote and protect a Pennsylvania Preferred® trademark for use
5 on or in connection with the sale or promotion of Pennsylvania-
6 produced agricultural commodities and agricultural products.

7 § 4605. Fees and costs.

8 (a) Trademark license fee.--The department is authorized to
9 impose and collect a license fee of up to \$100 for the use of
10 the Pennsylvania Preferred® trademark in connection with the
11 advertising, display, promotion, packaging, marketing or sale of
12 Pennsylvania-produced agricultural commodities and agricultural
13 products.

14 (b) Reimbursement of costs.--The department is authorized to
15 charge a licensee for costs incurred by the department in
16 connection with that licensee's participation in any activity,
17 trade show, exhibition or other promotional event conducted or
18 facilitated by the department. The charge shall reasonably
19 reflect the costs incurred by the department in facilitating the
20 licensee's participation and may include such costs as
21 proportional shares of event registration fees, equipment rental
22 fees, display area rental fees and other costs.

23 (c) Procedure for establishing trademark license fee.--The
24 department shall establish the trademark license fee described
25 in subsection (a) through publication of notice in the
26 Pennsylvania Bulletin and may revise this fee by the same
27 procedure.

28 (d) Fee interval.--A fee established under subsection (a)
29 shall be due each time a person enters into a trademark license
30 agreement with the department and each time an existing

trademark license agreement is renewed for an additional one-
year interval.

§ 4606. Establishment of fund.

There is established a special fund in the State Treasury, to
be known as the Pennsylvania Preferred® Trademark Licensing
Fund, for the following purposes:

(1) To promote the licensure and use of the Pennsylvania
Preferred® trademark with respect to Pennsylvania-produced
agricultural commodities and agricultural products.

(2) To promote the Pennsylvania Preferred® trademark as
a standard of origin and quality.

(3) To promote Pennsylvania-produced agricultural
commodities and agricultural products with respect to which
the Pennsylvania Preferred® trademark is licensed.

(4) To pay costs associated with monitoring the use of
the Pennsylvania Preferred® trademark, prohibiting the
unlawful or unauthorized use of the trademark and enforcing
rights in the trademark.

(5) To otherwise fund the department's costs in
administering and enforcing this chapter.

§ 4607. Disposition of funds.

The following funds shall be credited to the Pennsylvania
Preferred® Trademark Licensing Fund:

(1) Funds derived from the fees established under
section 4605(a) (relating to fees and costs).

(2) Funds derived from the reimbursement of costs
described in section 4605(b).

(3) Funds derived from contributions from any other
sources and designated by the contributor to be credited to
the fund.

1 (4) Funds derived from civil penalties collected by the
2 department under section 4611 (relating to civil penalties).

3 (5) Any other funds lawfully designated to be credited
4 to the fund.

5 § 4608. Duties and authority of department.

6 (a) Department authority to enter into trademark license
7 agreements.--The department is authorized to enter into a
8 trademark license agreement with any qualified entity. The
9 agreement shall address the conditions under which the qualified
10 entity may make commercial use of the Pennsylvania Preferred®
11 trademark.

12 (b) Department authority to protect commercial value of
13 trademark.--The department shall include, in a trademark license
14 agreement, such terms and requirements as it determines are
15 reasonably necessary to ensure that a licensee and the
16 Pennsylvania-produced agricultural commodities and agricultural
17 products it markets under the Pennsylvania Preferred® trademark
18 are:

19 (1) in compliance with all applicable Federal and State
20 standards;

21 (2) produced using current applicable good production
22 practices and good management practices; and

23 (3) produced for introduction into commerce so as to
24 create and protect the reputation of commodities and products
25 marketed under the Pennsylvania Preferred® trademark as being
26 of good quality.

27 (c) Cooperative activities.--The department is authorized to
28 engage in cooperative activities with other entities to
29 implement and advance the purposes of this chapter.

30 § 4609. Trademark license agreement, application and licensure

1 process.

2 (a) General rule.--

3 (1) A person may apply to be licensed to use the
4 Pennsylvania Preferred® trademark.

5 (2) The application shall be on a form prepared by the
6 department and shall require identification information and
7 other information the department deems necessary to making a
8 determination as to whether an applicant is a qualified
9 entity.

10 (3) The application form shall be provided by the
11 department upon request.

12 (4) The department shall have and exercise discretion to
13 determine whether a person is a qualified entity for purposes
14 of this chapter.

15 (5) If the department determines that an applicant is a
16 qualified entity, it shall offer that qualified entity a
17 trademark license agreement, addressing the conditions under
18 which the qualified entity may make commercial use of the
19 Pennsylvania Preferred® trademark.

20 (6) A trademark license agreement under this chapter
21 shall be of no more than one year's duration and shall
22 contain provisions allowing for the termination of the
23 license agreement by the department upon 60 days' advance
24 written notice to the licensee.

25 (b) Preexisting trademark license agreements.--Any trademark
26 license agreement that is in effect prior to the effective date
27 of this chapter and that authorizes the use of the Pennsylvania
28 Preferred® trademark shall remain in effect until it is
29 terminated or until the end of the current contract year,
30 whichever occurs first.

1 § 4610. Pennsylvania-produced agricultural commodity or
2 agricultural product.

3 A Pennsylvania-produced agricultural commodity or
4 agricultural product includes the following:

5 (1) Fresh unprocessed food, nursery products and other
6 agricultural commodities that:

7 (i) are entirely harvested from a Pennsylvania
8 location; or

9 (ii) are grown at a Pennsylvania location for at
10 least 75% of the product's production cycle, inspected by
11 the department, USDA, FDA or an independent certifying
12 agency approved by the department, and are approved by
13 the inspecting entity as meeting all applicable quality
14 standards of that inspecting entity with no exceptions.

15 (2) Agricultural products where:

16 (i) the licensee is headquartered within this
17 Commonwealth;

18 (ii) the final processing and packaging of the
19 agricultural product occurs within this Commonwealth; and

20 (iii) the licensee agrees that where the primary
21 agricultural ingredients of the processed agricultural
22 product are grown within this Commonwealth, the licensee
23 shall buy as much of that Pennsylvania-produced
24 ingredient as is practical given production season
25 restrictions and other business conditions.

26 (3) Processors or manufacturers of agricultural products
27 where:

28 (i) the licensee is headquartered within this
29 Commonwealth;

30 (ii) the final processing and packaging of the

1 agricultural product occurs within this Commonwealth; and

2 (iii) the licensee agrees that where the primary
3 agricultural ingredients of the processed agricultural
4 product are grown within this Commonwealth, the licensee
5 shall buy as much of that Pennsylvania-produced
6 ingredient as is practical given production season
7 restrictions and other business conditions.

8 (4) Grocery stores, plant nurseries and other retailers
9 where the licensee:

10 (i) is physically located within this Commonwealth;
11 and

12 (ii) carries at least 50 different Pennsylvania
13 Preferred® commodities or products.

14 (5) Individual restaurant menu items that include
15 featured Pennsylvania Preferred® ingredients.

16 (6) Restaurants that:

17 (i) are physically located within this Commonwealth;
18 and

19 (ii) offer as many Pennsylvania Preferred® items as
20 is practical given production season restrictions and
21 other business conditions.

22 (7) Indirect program participants, such as distributors,
23 wholesalers and trade associations that agree to promote use
24 of the Pennsylvania Preferred® trademark to their
25 constituencies and to use the Pennsylvania Preferred®
26 trademark only in connection with furthering the purposes of
27 this chapter.

28 § 4611. Civil penalties.

29 In addition to any other remedy available at law or in equity
30 for a violation of a provision of this chapter or a trademark

1 license agreement established under this chapter, the department
2 may assess a civil penalty upon the person responsible for the
3 violation. The civil penalty assessed shall not exceed \$10,000
4 and shall be payable to the Commonwealth and collectible in any
5 manner now or hereafter provided at law for the collection of
6 debt.

7 § 4612. Injunctive relief.

8 In addition to any other remedies provided for in this
9 chapter, the Attorney General, at the request of the department,
10 may initiate, in the Commonwealth Court or the court of common
11 pleas of the county in which the defendant resides or has his
12 place of business, an action in equity for an injunction to
13 restrain violations of this chapter or a trademark license
14 agreement. In any such proceeding, the court shall, upon motion
15 of the Commonwealth, issue a preliminary injunction if it finds
16 that the defendant is engaging in unlawful conduct under this
17 chapter or is engaging in conduct which is causing immediate or
18 irreparable harm to the public. The Commonwealth shall not be
19 required to furnish bond or other security in connection with
20 the proceedings. In addition to an injunction, the court, in
21 equity proceedings, may levy civil penalties as provided in
22 section 4611 (relating to civil penalties).

23 Section 2. This act shall take effect in 60 days.