

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1424 Session of 2011

INTRODUCED BY BLOOM, MAHER, M. K. KELLER, PETRARCA, AUMENT, BEAR, BENNINGHOFF, BOBACK, BOYD, CREIGHTON, CUTLER, DELOZIER, DENLINGER, EVERETT, FLECK, GABLER, GEIST, GIBBONS, GILLEN, GINGRICH, GRELL, GROVE, HACKETT, HAHN, HARHAI, HEFFLEY, HELM, HENNESSEY, HICKERNELL, HUTCHINSON, JOSEPHS, KAMPF, KAUFFMAN, F. KELLER, KNOWLES, LAWRENCE, MAJOR, MARSHALL, MASSER, METZGAR, MILLARD, MILLER, MURT, MUSTIO, OBERLANDER, O'NEILL, PEIFER, PERRY, PICKETT, PYLE, REESE, REICHLEY, ROCK, ROSS, SACCONI, SAINATO, SANTONI, SAYLOR, CULVER, SCHRODER, SIMMONS, STERN, STEVENSON, SWANGER, TALLMAN, TOBASH, TOEPEL, TOOHIL, VEREB AND VULAKOVICH, MAY 2, 2011

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, MAY 2, 2011

AN ACT

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

10 CHAPTER 46

11 PENNSYLVANIA PREFERRED® TRADEMARK

12 Sec.

13 4601. Short title of chapter.

14 4602. Definitions.

1 4603. Pennsylvania Preferred® trademark.
2 4604. Licensee qualification.
3 4605. Duties and authority of department.
4 4606. Trademark license agreement, application and licensure
5 process.
6 4607. Fees and costs.
7 4608. Pennsylvania Preferred® Trademark Licensing Fund.
8 4609. Civil penalties.
9 4610. Injunctive relief.
10 4611. Rules and regulations.
11 § 4601. Short title of chapter.

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

14 § 4602. Definitions.

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

18 "Agricultural commodity." Any of the following:

19 (1) Agricultural, apicultural, aquacultural,
20 horticultural, floricultural, silvicultural, viticultural and
21 dairy products.

22 (2) Livestock and the products thereof.

23 (3) Ranch-raised furbearing animals and the products
24 thereof.

25 (4) Poultry and the products of poultry.

26 (5) Products commonly raised or produced on farms which
27 are:

28 (i) intended for human consumption; or

29 (ii) transported or intended to be transported in
30 commerce.

1 (6) Processed or manufactured products of products
2 commonly raised or produced on farms which are:

3 (i) intended for human consumption; or

4 (ii) transported or intended to be transported in
5 commerce.

6 "Department." The Department of Agriculture of the
7 Commonwealth.

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

10 "Licensee." A qualified entity that is subject to a current
11 Pennsylvania Preferred® trademark license agreement with the
12 department.

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

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

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

23 "USDA." The United States Department of Agriculture.

24 § 4603. Pennsylvania Preferred® trademark.

25 The department shall take all actions necessary and
26 appropriate to acquire, create, establish, register, maintain,
27 license, promote and protect a Pennsylvania Preferred® trademark
28 for use on or in connection with the sale or promotion of a
29 Pennsylvania-produced agricultural commodity.

30 § 4604. Licensee qualification.

1 A qualified entity shall meet at least one of the following
2 requirements to become a licensee:

3 (1) Be a person that produces an agricultural commodity:

4 (i) that is entirely harvested from a Pennsylvania
5 location or is grown at a Pennsylvania location for at
6 least 75% of the commodity's production cycle; and

7 (ii) that, if inspected by the department, the USDA,
8 the FDA or an independent certifying agency approved by
9 the department, is approved by the inspecting authority
10 as meeting all applicable food quality, sanitation,
11 safety and labeling standards of that inspecting
12 authority.

13 (2) Be a person that processes an agricultural
14 commodity:

15 (i) in whole or in part at a facility which is
16 located within this Commonwealth and which is in
17 compliance with 3 Pa.C.S Ch. 57 Subch. B (relating to
18 food safety) and all applicable Federal and State food
19 quality, sanitation, safety and labeling standards
20 regulations; and

21 (ii) the use of which, to the maximum extent
22 possible given production season restrictions or market
23 availability, is a Pennsylvania-produced agricultural
24 commodity.

25 (3) Be a person that markets an agricultural commodity
26 from a person that meets the provisions of paragraph (1) or
27 (2).

28 (4) Be a public eating and drinking place licensed under
29 and in compliance with Subchapter A of Chapter 57 (relating
30 to retail food facility safety) or under the act of August

1 24, 1951 (P.L.1304, No.315), known as the Local Health
2 Administration Law, which offers a menu item that includes an
3 agricultural commodity from a person that meets the
4 provisions of paragraph (1) or (2).

5 (5) Be a person approved by the department to use and
6 promote the use of the Pennsylvania Preferred® trademark to
7 constituencies in furthering the purposes of this chapter.

8 § 4605. Duties and authority of department.

9 (a) Department authority to enter into trademark license
10 agreements.--

11 (1) The department may enter into a trademark license
12 agreement with a qualified entity.

13 (2) The department shall establish the terms and
14 conditions under which a person may be licensed to use the
15 Pennsylvania Preferred® trademark. Terms and conditions shall
16 require a licensee to produce, process or market an
17 agricultural commodity in a manner acceptable to the
18 department which protects the reputation of the Pennsylvania
19 Preferred® trademark.

20 (3) The department may periodically review a licensing
21 agreement to determine if the terms are being met.

22 (b) Cooperative activities.--The department may engage in
23 cooperative activities to implement and advance the purposes of
24 this chapter.

25 § 4606. Trademark license agreement, application and licensure
26 process.

27 (a) General rule.--

28 (1) A qualified entity may apply to be licensed to use
29 the Pennsylvania Preferred® trademark.

30 (2) An application shall be on a form prepared by the

1 department and shall require identification information and
2 other information the department deems necessary to determine
3 if an applicant is a qualified entity.

4 (3) The application form shall be provided by the
5 department upon request.

6 (4) The department shall have the discretion to
7 determine whether a person is a qualified entity for purposes
8 of this chapter.

9 (5) If the department determines that an applicant is a
10 qualified entity, it shall offer that qualified entity a
11 trademark license agreement.

12 (6) A trademark license agreement under this chapter
13 shall be effective for one year from the date upon which an
14 agreement is executed and may be renewed. An agreement shall
15 contain provisions allowing for the termination of the
16 license agreement by the department or a licensee upon 60
17 days' advance written notice to the other party.

18 (b) Preexisting trademark license agreements.--A trademark
19 license agreement that is in effect prior to the effective date
20 of this section and that authorizes the use of a Pennsylvania
21 Preferred® trademark shall remain in effect until it is
22 terminated or until the end of the current contract year,
23 whichever occurs first.

24 § 4607. Fees and costs.

25 (a) Trademark license fee.--The department may impose and
26 collect from a qualified entity a license fee of no more than
27 \$100 annually per license for the use of the Pennsylvania
28 Preferred® trademark.

29 (b) Fee interval.--A fee established under subsection (a)
30 shall be due at the time a qualified entity enters into a

1 trademark license agreement with the department and at the time
2 an existing trademark license agreement is renewed for an
3 additional one-year interval.

4 (c) Procedure for establishing trademark license fee.--The
5 department shall establish a trademark license fee described
6 under subsection (a) through publication of notice in the
7 Pennsylvania Bulletin and may revise the fee by the same
8 procedure.

9 (d) Reimbursement of costs.--

10 (1) The department may charge a licensee for costs
11 incurred by the department in connection with that licensee's
12 participation in any activity, trade show, exhibition or
13 other promotional event conducted or facilitated by the
14 department. A charge shall reasonably reflect the costs
15 incurred by the department in facilitating the licensee's
16 participation and may include such costs as proportional
17 shares of event registration fees, equipment rental fees,
18 display area rental fees and related costs.

19 (2) The department may charge a licensee for costs of
20 Pennsylvania Preferred® promotional materials provided by the
21 department at the request of the licensee.

22 § 4608. Pennsylvania Preferred® Trademark Licensing Fund.

23 (a) Establishment.--There is established a fund which shall
24 be an interest-bearing restricted revenue account to be known as
25 the Pennsylvania Preferred® Trademark Licensing Fund. The
26 following money shall be deposited into the fund:

27 (1) Money as is appropriated, given, granted or donated
28 for the purpose established under this chapter by the Federal
29 Government, the Commonwealth or any other government or
30 private agency or person.

1 (2) Funds derived from the fees and costs established
2 under section 4607 (relating to fees and costs).

3 (3) Funds derived from civil penalties collected by the
4 department under section 4609 (relating to civil penalties).

5 (b) Appropriation.--Money in the fund is appropriated on a
6 continuing basis to the department for the purpose of
7 administering this chapter. All interest and earnings received
8 from investment or deposit of the money in the fund shall be
9 paid into the account for the purpose authorized by this
10 section. Any unexpended money and any interest or earnings on
11 the money in the fund may not be transferred or revert to the
12 General Fund, but shall remain in the account to be used by the
13 department for the purpose specified under this section.

14 (c) Use.--Money deposited in the fund shall be used as
15 follows:

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

19 (2) To promote the Pennsylvania Preferred® trademark as
20 an identification of origin and quality.

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

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

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

30 § 4609. Civil penalties.

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

8 § 4610. Injunctive relief.

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

24 § 4611. Rules and regulations.

25 The department shall promulgate rules and regulations
26 necessary to promote the efficient, uniform and Statewide
27 administration of this chapter. For two years from the effective
28 date of this section, the department shall have the power and
29 authority to promulgate, adopt and use guidelines to implement
30 the provisions of this chapter. The guidelines shall be

1 published in the Pennsylvania Bulletin but shall not be subject
2 to review under section 205 of the act of July 31, 1968
3 (P.L.769, No.240), referred to as the Commonwealth Documents
4 Law, sections 204(b) and 301(10) of the act of October 15, 1980
5 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or
6 the act of June 25, 1982 (P.L.633, No.181), known as the
7 Regulatory Review Act. All guidelines shall expire no later than
8 December 31, 2013, and shall be replaced by regulations which
9 shall have been promulgated, adopted and published as provided
10 under law.

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