
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2152 Session of
2021

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WARREN, HOHENSTEIN, KINSEY, GUENST AND HANBIDGE,
DECEMBER 10, 2021

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
DECEMBER 10, 2021

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, in Pennsylvania Preferred® Trademark, further
3 providing for definitions, providing for Pennsylvania
4 Preferred® and Pennsylvania Preferred Organic® Trademark
5 Licensing Fund and for rules and regulations, repealing
6 provisions relating to Pennsylvania Preferred® Trademark
7 Licensing Fund and rules and regulations, providing for the
8 Pennsylvania Preferred Organic® Program, for Pennsylvania
9 Preferred Organic® trademark and for purpose, establishing
10 the Pennsylvania Preferred Organic® Advisory Committee and
11 providing for standards, for duties and authority of
12 department, for trademark license agreement, application and
13 licensure process, for costs, for civil penalties and for
14 injunctive relief.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Section 4602 of Title 3 of the Pennsylvania
18 Consolidated Statutes is amended by adding definitions to read:

19 § 4602. Definitions.

20 The following words and phrases when used in this chapter
21 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Advisory committee." The Pennsylvania Preferred Organic®
3 Advisory Committee established under section 4624 (relating to
4 Pennsylvania Preferred Organic® Advisory Committee).

5 * * *

6 "Pennsylvania Preferred Organic® trademark." One or more
7 trademarks that consist of the phrase "Pennsylvania Preferred
8 Organic" or "Pennsylvania Preferred Organic" and that may
9 include specific graphic designs or artwork as part of the
10 trademark registration and that identify the agricultural
11 commodity with respect to which the trademark is used as meeting
12 the requirements of this chapter for Pennsylvania-produced
13 organic agricultural commodities.

14 * * *

15 "USDA National Organic Production Program." The National
16 Organic Production Program established under section 2104 of the
17 Organic Foods Production Act of 1990 (Public Law 101-624, 7
18 U.S.C. § 6503) and any attendant regulations.

19 Section 2. Title 3 is amended by adding sections to read:

20 § 4603. Pennsylvania Preferred® and Pennsylvania Preferred
21 Organic® Trademark Licensing Fund.

22 (a) Redesignation.--The Pennsylvania Preferred® Trademark
23 Licensing Fund in the State Treasury is redesignated the
24 Pennsylvania Preferred® and Pennsylvania Preferred Organic®
25 Trademark Licensing Fund. The following money shall be deposited
26 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 costs established under
2 sections 4615 (relating to costs) and 4628 (relating to
3 costs).

4 (3) Funds derived from civil penalties collected by the
5 department under sections 4617 (relating to civil penalties)
6 and 4629 (relating to civil penalties).

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

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

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

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

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

26 (4) To promote the Pennsylvania Preferred Organic®
27 Program.

28 (5) To pay costs associated with monitoring the use of
29 the Pennsylvania Preferred® trademark, prohibiting the
30 unlawful or unauthorized use of the trademark and enforcing

1 rights in the trademark.

2 (6) To promote participation under this chapter by
3 qualified veterans and qualified veteran business entities.

4 (7) To promote, encourage and facilitate cooperation by
5 the department with military, government or private sector
6 marketing efforts that identify, emphasize and encourage the
7 production and marketing of Pennsylvania-produced
8 agricultural commodities by qualified veterans and qualified
9 veteran business entities.

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

12 (d) Definitions.--As used in this section, the following
13 words and phrases shall have the meanings given to them in this
14 subsection unless the context clearly indicates otherwise:

15 "Qualified veteran." As defined under section 4632 (relating
16 to definitions).

17 "Qualified veteran business entity." As defined under
18 section 4632.

19 § 4604. Rules and regulations.

20 The department shall promulgate rules and regulations
21 necessary to promote the efficient, uniform and Statewide
22 administration of this subchapter.

23 Section 3. Sections 4616 and 4619 of Title 3 are repealed:

24 [§ 4616. Pennsylvania Preferred® Trademark Licensing Fund.

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

30 (1) Money as is appropriated, given, granted or donated

1 for the purpose established under this chapter by the Federal
2 Government, the Commonwealth or any other government or
3 private agency or person.

4 (2) Funds derived from the costs established under
5 section 4615 (relating to costs).

6 (3) Funds derived from civil penalties collected by the
7 department under section 4617 (relating to civil penalties).

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

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

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

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

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

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

1 (4.1) To promote participation under this chapter by
2 qualified veterans and qualified veteran business entities.

3 (4.2) To promote, encourage and facilitate cooperation
4 by the department with military, government or private sector
5 marketing efforts that identify, emphasize and encourage the
6 production and marketing of Pennsylvania-produced
7 agricultural commodities by qualified veterans and qualified
8 veteran business entities.

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

11 (d) Definitions.--As used in this section, the following
12 words and phrases shall have the meanings given to them in this
13 subsection unless the context clearly indicates otherwise:

14 "Qualified veteran." As defined under section 4632 (relating
15 to definitions).

16 "Qualified veteran business entity." As defined under
17 section 4632.

18 § 4619. Rules and regulations.

19 The department shall promulgate rules and regulations
20 necessary to promote the efficient, uniform and Statewide
21 administration of this chapter. For two years from the effective
22 date of this section, the department shall have the power and
23 authority to promulgate, adopt and use guidelines to implement
24 the provisions of this chapter. The guidelines shall be
25 published in the Pennsylvania Bulletin but shall not be subject
26 to review under section 205 of the act of July 31, 1968
27 (P.L.769, No.240), referred to as the Commonwealth Documents
28 Law, sections 204(b) and 301(10) of the act of October 15, 1980
29 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or
30 the act of June 25, 1982 (P.L.633, No.181), known as the

1 Regulatory Review Act. All guidelines shall expire no later than
2 December 31, 2013, and shall be replaced by regulations which
3 shall have been promulgated, adopted and published as provided
4 under law.]

5 Section 4. Subchapter C heading of Chapter 46 of Title 3 is
6 amended to read:

7 SUBCHAPTER C

8 [(Reserved)]

9 PENNSYLVANIA PREFERRED ORGANIC® PROGRAM

10 Section 5. Subchapter C of Chapter 46 of Title 3 is amended
11 by adding sections to read:

12 § 4621. Pennsylvania Preferred Organic® Program.

13 The department shall establish, administer and operate a
14 Pennsylvania Preferred Organic® Program.

15 § 4622. Pennsylvania Preferred Organic® trademark.

16 The department shall take all actions necessary and
17 appropriate to acquire, create, establish, register, maintain,
18 license, promote and protect a Pennsylvania Preferred Organic®
19 trademark for use on or in connection with the sale, marketing
20 or promotion of a Pennsylvania-produced agricultural organic
21 commodity.

22 § 4623. Purpose.

23 The purposes of this subchapter shall be to:

24 (1) Establish a program under which qualified producers,
25 processors and marketers of Pennsylvania-produced organic
26 agricultural commodities can be licensed by the department to
27 make use of the Pennsylvania Preferred Organic® trademark
28 with respect to agricultural organic products.

29 (2) Establish licensure standards that require qualified
30 producers described under paragraph (1) to meet or exceed the

1 standards required under the USDA National Organic Production
2 Program.

3 (3) Establish the Pennsylvania Preferred Organic®
4 trademark as a symbol of product quality and of organic
5 production in accordance with rigorous, scientific standards
6 for production of organic agricultural commodities.

7 (4) Provide added product value for licensed qualified
8 entities that make use of the Pennsylvania Preferred Organic®
9 trademark.

10 (5) Encourage producers of Pennsylvania-produced organic
11 agricultural commodities to, as a desirable business measure,
12 meet or exceed USDA National Organic Production Program
13 standards and to pursue licensure to make use of the
14 Pennsylvania Preferred Organic® trademark.

15 (6) Provide the department, the advisory committee
16 established under section 4624 (relating to Pennsylvania
17 Preferred Organic® Advisory Committee) and this
18 Commonwealth's organic producers greater familiarity with the
19 requirements of the USDA National Organic Production Program
20 and, in time, pursue USDA approval of the Pennsylvania
21 Preferred Organic® Program as the official organics program
22 in this Commonwealth.

23 (7) Encourage organic production and organic soil-
24 building practices that enhance biodiversity, conserve
25 natural resources and contribute to other public and
26 environmental health benefits.

27 (8) Improve this Commonwealth's competitiveness in
28 organic agricultural commodities.

29 § 4624. Pennsylvania Preferred Organic® Advisory Committee.

30 (a) Establishment.--The secretary shall establish an

1 advisory committee, which shall be known as the Pennsylvania
2 Preferred Organic® Advisory Committee, to advise the secretary
3 with respect to the secretary's responsibilities under this
4 subchapter.

5 (b) Membership.--

6 (1) Each member of the advisory committee may have an
7 alternate. The advisory committee shall be composed as
8 follows:

9 (i) The secretary or a designee, who shall chair the
10 advisory committee.

11 (ii) Six members shall be producers, at least two of
12 whom shall be producers of meat, fowl, fish, dairy
13 products or eggs.

14 (iii) Two members shall be processors.

15 (iv) One member shall be a wholesale distributor.

16 (v) One member shall be a representative of an
17 accredited certifying agency operating in this
18 Commonwealth.

19 (vi) One member shall be a consumer representative.

20 The following shall apply:

21 (A) The consumer representative may not have a
22 financial interest in the direct sales or marketing
23 of the organic product industry.

24 (B) The consumer representative shall be a
25 member or employee of representatives of recognized
26 nonprofit organizations whose principal purpose is
27 the protection of consumer health.

28 (vii) One member shall be an environmental
29 representative. The following shall apply:

30 (A) The environmental representative may not

1 have a financial interest in the direct sales or
2 marketing of the organic product industry.

3 (B) The environmental representative shall be a
4 member or employee of representatives of recognized
5 nonprofit organizations whose principal purpose is
6 the protection of the environment.

7 (viii) Two members shall be technical
8 representatives with scientific credentials related to
9 agricultural chemicals, toxicology or food science. The
10 following shall apply:

11 (A) The technical representatives shall not have
12 a financial interest in the production, handling,
13 processing or marketing of the organic products
14 industry.

15 (B) The technical representatives may be
16 involved in organic research or technical review,
17 providing that the technical representatives have no
18 financial benefit from results of the research
19 project or technical review.

20 (ix) One member shall be a retail representative.

21 (2) Except for the consumer, environmental and technical
22 representatives described in paragraph (1)(vi), (vii) and
23 (viii), the members of the advisory committee shall have
24 derived a substantial portion of their business income, wages
25 or salary from services that the members provide that
26 directly result in the production, handling, processing or
27 retailing of products sold as organic for at least three
28 years preceding the appointment to the advisory committee.

29 (c) Duties.--The advisory committee shall have the following
30 duties:

1 (1) Advise the secretary on education, outreach and
2 technical assistance for producers.

3 (2) Advise with respect to the creation of standards
4 under which the department shall license qualified entities
5 to make use of the Pennsylvania Preferred® Organic trademark
6 in connection with the sale, marketing or promotion of
7 Pennsylvania-produced organic agricultural commodities.

8 (3) Advise the secretary on program and regulatory
9 standards for the Pennsylvania Preferred® Organic Program and
10 ways to improve that program, with the objective of
11 establishing standards at least as rigorous as those for the
12 USDA National Organic Production Program.

13 (4) As requested by the secretary, support organic
14 agriculture through outreach and educational efforts targeted
15 to producers, consumers, academia, Federal regulators and
16 others.

17 (d) Terms.--The members of the advisory committee shall
18 serve for terms of two years or three years or until their
19 successors are appointed, except that the members of the
20 advisory board first appointed shall be appointed for staggered
21 terms so that the terms of no more than five members shall
22 expire annually.

23 § 4625. Standards.

24 (a) Organic standards.--The organic food or product
25 regulations adopted under the Organic Foods Production Act of
26 1990 (Public Law 101-624, 7 U.S.C. § 6501 et seq.) that are in
27 effect on the effective date of this section, or that are
28 adopted after the effective date of this section, shall be the
29 organic standards under which the department licenses qualified
30 entities to make use of the Pennsylvania Preferred Organic®

1 trademark with respect to Pennsylvania-produced organic
2 agricultural commodities, except to the extent that the
3 department promulgates regulatory standards that vary from those
4 Federal standards.

5 (b) Regulatory standards.--The secretary may, by regulation,
6 prescribe standards under which the department shall license
7 qualified entities to make use of the Pennsylvania Preferred
8 Organic® trademark with respect to Pennsylvania-produced organic
9 agricultural commodities that vary from regulatory standards
10 promulgated under the authority of subsection (a).

11 § 4626. Duties and authority of department.

12 (a) Department authority to enter into trademark license
13 agreements.--

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

16 (2) The terms and conditions shall require a licensee to
17 produce, process, promote or market an agricultural commodity
18 in a manner acceptable to the department which protects the
19 reputation of the Pennsylvania Preferred Organic® trademark.

20 (3) The department may periodically review a trademark
21 license 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 § 4627. Trademark license agreement, application and licensure
26 process.

27 (a) Process.--

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

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

1 department and include identification information and other
2 information that the department deems necessary to determine
3 if the 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 subchapter.

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

12 (6) A trademark license agreement under this subchapter
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 trademark license agreement by the department or a licensee
17 upon 60 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 or Pennsylvania Preferred Organic®
22 trademark shall remain in effect until it is terminated or until
23 the end of the current contract year, whichever occurs first.

24 § 4628. Costs.

25 Reimbursement of costs are as follows:

26 (1) The department may charge a licensee for costs
27 incurred by the department in connection with that licensee's
28 participation in an activity, trade show, exhibition or other
29 promotional event conducted or facilitated by the department.

30 A charge shall reasonably reflect the costs incurred by the

1 department in facilitating the licensee's participation and
2 may include such costs as proportional shares of event
3 registration fees, equipment rental fees, display area rental
4 fees and related costs.

5 (2) The department may charge a licensee for costs of
6 Pennsylvania Preferred Organic® promotional materials
7 provided by the department at the request of the licensee.

8 § 4629. Civil penalties.

9 In addition to other remedies available at law or in equity
10 for a violation of a provision of this subchapter or a trademark
11 license agreement established under this subchapter, the
12 department may assess a civil penalty upon the person
13 responsible for the violation. The civil penalty assessed shall
14 not exceed \$10,000 and shall be payable to the Commonwealth and
15 collectible in any manner provided under law for the collection
16 of debt.

17 § 4630. Injunctive relief.

18 In addition to any other remedies provided for under this
19 subchapter, the Attorney General, at the request of the
20 department, may initiate, in the Commonwealth Court or the court
21 of common pleas of the county in which the defendant resides or
22 has his place of business, an action in equity for an injunction
23 to restrain violations of this chapter or a trademark license
24 agreement. In the proceeding, the court shall, upon motion of
25 the Commonwealth, issue a preliminary injunction if it finds
26 that the defendant is engaging in unlawful conduct under this
27 subchapter or is engaging in conduct which is causing immediate
28 or irreparable harm to the public. The Commonwealth shall not be
29 required to furnish bond or other security in connection with
30 the proceedings. In addition to an injunction, the court, in

1 equity proceedings, may levy civil penalties as provided under
2 section 4629 (relating to civil penalties).

3 Section 6. This act shall take effect in 60 days.