

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 to rules and regulations, providing for
8 the 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; and making an editorial change.

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
22 context clearly indicates otherwise:

23 "Advisory committee." The Pennsylvania Preferred Organic®

1 Advisory Committee established under section 4624 (relating to
2 Pennsylvania Preferred Organic® Advisory Committee).

3 * * *

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

12 * * *

13 "USDA National Organic Production Program." The National
14 Organic Production Program established under 7 U.S.C. § 6503
15 (relating to national organic production program) and any
16 attendant regulations.

17 Section 2. Title 3 is amended by adding sections to read:
18 § 4603. Pennsylvania Preferred® and Pennsylvania Preferred
19 Organic® Trademark Licensing Fund.

20 (a) Redesignation.--The Pennsylvania Preferred® Trademark
21 Licensing Fund in the State Treasury is redesignated the
22 Pennsylvania Preferred® and Pennsylvania Preferred Organic®
23 Trademark Licensing Fund. The following money shall be deposited
24 into the fund:

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

29 (2) Funds derived from the costs established under
30 sections 4615 (relating to costs) and 4628 (relating to

1 costs).

2 (3) Funds derived from civil penalties collected by the
3 department under sections 4617 (relating to civil penalties)
4 and 4629 (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 fund for the purpose authorized by this section.
10 Unexpended money and interest or earnings on the money in the
11 fund may not be transferred or revert to the General Fund but
12 shall remain in the fund to be used by the department for the
13 purpose specified under this section.

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

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

20 (2) To promote the Pennsylvania Preferred® trademark and
21 Pennsylvania Preferred Organic® trademark as an
22 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 is 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 of:

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

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

13 (iii) Two members shall be processors.

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

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

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

19 The following shall apply:

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

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

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

29 (A) The environmental representative may not
30 have a financial interest in the direct sales or

1 marketing of the organic product industry.

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

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

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

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

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

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

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

30 (1) Advise the secretary on education, outreach and

1 technical assistance for producers.

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

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

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

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

22 § 4625. Standards.

23 (a) Organic standards.--The organic food or product
24 regulations adopted under 7 U.S.C. § 6521 (relating to
25 administration) that are in effect on the effective date of this
26 section, or that are adopted after the effective date of this
27 section, shall be the organic standards under which the
28 department licenses qualified entities to make use of the
29 Pennsylvania Preferred Organic® trademark with respect to
30 Pennsylvania-produced organic agricultural commodities, except

1 to the extent that the department promulgates regulatory
2 standards that vary from those Federal standards.

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

9 § 4626. Duties and authority of department.

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

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

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

18 (3) The department may periodically review a trademark
19 license agreement to determine if the terms are being met.

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

23 § 4627. Trademark license agreement, application and licensure
24 process.

25 (a) Application for agreement.--

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

28 (2) The application shall be on a form prepared by the
29 department and include identification information and other
30 information that the department deems necessary to determine

1 if the applicant is a qualified entity.

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

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

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

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

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

22 § 4628. Costs.

23 Reimbursement of costs are as follows:

24 (1) The department may charge a licensee for costs
25 incurred by the department in connection with that licensee's
26 participation in an activity, trade show, exhibition or other
27 promotional event conducted or facilitated by the department.
28 A charge shall reasonably reflect the costs incurred by the
29 department in facilitating the licensee's participation and
30 may include such costs as proportional shares of event

1 registration fees, equipment rental fees, display area rental
2 fees and related costs.

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

6 § 4629. Civil penalties.

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

15 § 4630. Injunctive relief.

16 In addition to any other remedies provided for under this
17 subchapter, the Attorney General, at the request of the
18 department, may initiate, in the Commonwealth Court or the court
19 of common pleas of the county in which the defendant resides or
20 has a place of business, an action in equity for an injunction
21 to restrain violations of this chapter or a trademark license
22 agreement. In the proceeding, the court shall, upon motion of
23 the Commonwealth, issue a preliminary injunction if it finds
24 that the defendant is engaging in unlawful conduct under this
25 subchapter or is engaging in conduct which is causing immediate
26 or irreparable harm to the public. The Commonwealth shall not be
27 required to furnish bond or other security in connection with
28 the proceedings. In addition to an injunction, the court, in
29 equity proceedings, may levy civil penalties as provided under
30 section 4629 (relating to civil penalties).

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

