

AMENDMENTS TO HOUSE BILL NO. 1520

Sponsor: SENATOR SCHWANK

Printer's No. 1915

1 Amend Bill, page 1, line 2, by striking out " providing for
2 grant programs." and inserting

3 in Pennsylvania Preferred® Trademark, further providing for
4 Pennsylvania Preferred® Trademark Licensing Fund and
5 providing for military veterans; providing for grant
6 programs; and making editorial changes.

7 Amend Bill, page 1, lines 5 and 6, by striking out all of
8 said lines and inserting

9 Section 1. Chapter 46 of Title 3 of the Pennsylvania
10 Consolidated Statutes is amended by adding a subchapter heading
11 immediately preceding section 4601 to read:

12 SUBCHAPTER A

13 GENERAL PROVISIONS

14 Section 2. Chapter 46 of Title 3 is amended by adding a
15 subchapter heading immediately preceding section 4603 to read:

16 SUBCHAPTER B

17 PENNSYLVANIA PREFERRED® PROGRAM

18 Section 3. Sections 4603, 4604, 4605, 4606 and 4607 of Title
19 3 are renumbered to read:

20 § [4603] 4611. Pennsylvania Preferred® trademark.

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

26 § [4604] 4612. Licensee qualification.

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

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

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

33 (ii) that, if inspected by the department, the USDA,
34 the FDA or an independent certifying agency approved by
35 the department, is approved by the inspecting authority
36 as meeting all applicable quality, sanitation, safety and

1 labeling standards of that inspecting authority.

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

4 (i) in whole or in part at a facility which is
5 located within this Commonwealth; and

6 (ii) in whole or in part at a facility, which, if
7 the agricultural commodity is intended for human
8 consumption, is in compliance with Subchapter B of
9 Chapter 57 (relating to food safety) and all applicable
10 Federal and State food quality, sanitation, safety and
11 labeling standards regulations; and

12 (iii) the use of which, to the maximum extent
13 possible given production season restrictions or market
14 availability, is a Pennsylvania-produced agricultural
15 commodity.

16 (3) Be a person that promotes or markets an agricultural
17 commodity from a person that meets the provisions of
18 paragraph (1) or (2).

19 (4) Be a public eating and drinking place licensed under
20 and in compliance with Subchapter A of Chapter 57 (relating
21 to retail food facility safety) or under the act of August
22 24, 1951 (P.L.1304, No.315), known as the Local Health
23 Administration Law, which offers a menu item that includes an
24 agricultural commodity from a person that meets the
25 provisions of paragraph (1) or (2).

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

29 § [4605] 4613. Duties and authority of department.

30 (a) Department authority to enter into trademark license
31 agreements.--

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

34 (2) The department shall establish the terms and
35 conditions under which a person may be licensed to use the
36 Pennsylvania Preferred® trademark. Terms and conditions shall
37 require a licensee to produce, process, promote or market an
38 agricultural commodity in a manner acceptable to the
39 department which protects the reputation of the Pennsylvania
40 Preferred® trademark.

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

43 (b) Cooperative activities.--The department may engage in
44 cooperative activities to implement and advance the purposes of
45 this chapter.

46 § [4606] 4614. Trademark license agreement, application and
47 licensure process.

48 (a) General rule.--

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

51 (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] 4615. 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 any activity, trade show, exhibition or
29 other promotional event conducted or facilitated by the
30 department. A charge shall reasonably reflect the costs
31 incurred by the department in facilitating the licensee's
32 participation and may include such costs as proportional
33 shares of event registration fees, equipment rental fees,
34 display area rental fees and related costs.

35 (2) The department may charge a licensee for costs of
36 Pennsylvania Preferred® promotional materials provided by the
37 department at the request of the licensee.

38 Section 4. Section 4608 of Title 3 is amended to read:

39 § [4608] 4616. Pennsylvania Preferred® Trademark Licensing
40 Fund.

41 (a) Establishment.--There is established in the State
42 Treasury a special fund which shall be an interest-bearing
43 restricted revenue account to be known as the Pennsylvania
44 Preferred® Trademark Licensing Fund. The following money shall
45 be deposited into the fund:

46 (1) Money as is appropriated, given, granted or donated
47 for the purpose established under this chapter by the Federal
48 Government, the Commonwealth or any other government or
49 private agency or person.

50 (2) Funds derived from the costs established under
51 section [4607] 4615 (relating to costs).

(3) Funds derived from civil penalties collected by the department under section [4609] 4617 (relating to civil penalties).

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

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

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

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

(3) To promote Pennsylvania-produced agricultural commodities 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.

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

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

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

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

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

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

Section 5. Section 4609 of Title 3 is renumbered to read: § [4609] 4617. Civil penalties.

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

1 manner provided under law for the collection of debt.

2 Section 6. Section 4610 of Title 3 is amended to read:

3 § [4610] 4618. Injunctive relief.

4 In addition to any other remedies provided for under this
5 chapter, the Attorney General, at the request of the department,
6 may initiate, in the Commonwealth Court or the court of common
7 pleas of the county in which the defendant resides or has his
8 place of business, an action in equity for an injunction to
9 restrain violations of this chapter or a trademark license
10 agreement. In the proceeding, the court shall, upon motion of
11 the Commonwealth, issue a preliminary injunction if it finds
12 that the defendant is engaging in unlawful conduct under this
13 chapter or is engaging in conduct which is causing immediate or
14 irreparable harm to the public. The Commonwealth shall not be
15 required to furnish bond or other security in connection with
16 the proceedings. In addition to an injunction, the court, in
17 equity proceedings, may levy civil penalties as provided under
18 section [4609] 4617 (relating to civil penalties).

19 Section 6.1. Section 4611 of Title 3 is renumbered to read:

20 § [4611] 4619. Rules and regulations.

21 The department shall promulgate rules and regulations
22 necessary to promote the efficient, uniform and Statewide
23 administration of this chapter. For two years from the effective
24 date of this section, the department shall have the power and
25 authority to promulgate, adopt and use guidelines to implement
26 the provisions of this chapter. The guidelines shall be
27 published in the Pennsylvania Bulletin but shall not be subject
28 to review under section 205 of the act of July 31, 1968
29 (P.L.769, No.240), referred to as the Commonwealth Documents
30 Law, sections 204(b) and 301(10) of the act of October 15, 1980
31 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or
32 the act of June 25, 1982 (P.L.633, No.181), known as the
33 Regulatory Review Act. All guidelines shall expire no later than
34 December 31, 2013, and shall be replaced by regulations which
35 shall have been promulgated, adopted and published as provided
36 under law.

37 Section 7. Chapter 46 of Title 3 is amended by adding
38 subchapters to read:

39 SUBCHAPTER C

40 (Reserved)

41 SUBCHAPTER D

42 MILITARY VETERANS

43 Sec.

44 4631. Purpose.

45 4632. Definitions.

46 4633. Qualified veterans and qualified veteran business
47 entities.

48 § 4631. Purpose.

49 The purpose of this subchapter is to:

50 (1) Benefit qualified veterans and qualified veteran
51 business entities that are licensed by the department under

1 Subchapter B (relating to Pennsylvania Preferred Program) by
2 allowing and encouraging the use of other trademarks or
3 descriptive labels, packaging or advertisement information to
4 inform consumers that agricultural commodities were produced
5 by veterans of the armed forces of the United States.

6 (2) Encourage qualified veterans and qualified veteran
7 business entities to avail themselves of marketing
8 opportunities for Pennsylvania-produced agricultural
9 commodities through licensure under Subchapter B and
10 partnership with organizations such as the Farmer Veteran
11 Coalition Homegrown By Heroes program and similar programs
12 intended to encourage veterans to farm or to otherwise
13 benefit farmers who are veterans.

14 § 4632. Definitions.

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

18 "Qualified veteran." A qualified entity who:

19 (1) is a veteran of one or more of the armed forces of
20 the United States, including the United States Army, the
21 United States Navy, the United States Marine Corps, the
22 United States Air Force or the United States Coast Guard; and

23 (2) has received an honorable discharge or a general
24 discharge under honorable conditions.

25 "Qualified veteran business entity." A qualified entity to
26 which the following apply:

27 (1) The entity is a corporation, partnership,
28 association or other business organization.

29 (2) Qualified veterans make up 50% or more of the
30 entity's ownership and a minimum of 50% of the entity's
31 management control.

32 § 4633. Qualified veterans and qualified veteran business
33 entities.

34 (a) Encouragement of participation.--The department shall
35 promote participation under this subchapter by qualified
36 veterans and qualified veteran business entities and shall
37 conduct outreach and education efforts to encourage and
38 facilitate veteran participation.

39 (b) Coordination of effort.--The department shall cooperate
40 with military, government or private sector marketing efforts
41 that identify, emphasize and encourage the production and
42 marketing of Pennsylvania-produced agricultural commodities by
43 qualified veterans and qualified veteran business entities and
44 may allow the use of the Pennsylvania Preferred® trademark in a
45 cooperative effort.

46 Section 8. Title 3 is amended by adding a part to read:

47 Amend Bill, page 5, line 28, by striking out "2" and
48 inserting