

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, WHITE, FABRIZIO, BEYER
AND GEIST, FEBRUARY 18, 2010

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 8, 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 46PENNSYLVANIA PREFERRED® TRADEMARK

12 Sec.

13 § 4601. Short title of chapter.

14 § 4602. Declaration of policy.

15 § 4603. Definitions.

16 § 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~~ QUALIFYING STANDARDS. ←
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).~~ AGRICULTURAL, AQUACULTURAL,
HORTICULTURAL, VITICULTURAL AND DAIRY PRODUCTS, LIVESTOCK AND
THE PRODUCTS THEREOF, RANCH-RAISED FURBEARING ANIMALS AND THE
PRODUCTS THEREOF, THE PRODUCTS OF POULTRY AND BEE RAISING,
FORESTRY AND FORESTRY PRODUCTS AND ANY AND ALL PRODUCTS RAISED
OR PRODUCED ON FARMS INTENDED FOR HUMAN CONSUMPTION AND THE
PROCESSED OR MANUFACTURED PRODUCTS THEREOF INTENDED FOR HUMAN
CONSUMPTION, TRANSPORTED OR INTENDED TO BE TRANSPORTED IN
COMMERCE.

"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

1 artwork as part of the trademark registration.

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

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

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

9 § 4604. Pennsylvania Preferred® trademark.

10 The department shall take all actions necessary and
11 appropriate to acquire, create, register, maintain, license,
12 promote and protect a Pennsylvania Preferred® trademark for use
13 on or in connection with the sale or promotion of Pennsylvania-
14 produced agricultural commodities ~~and agricultural products.~~ ←

15 § 4605. Fees and costs.

16 (a) Trademark license fee.--The department is authorized to
17 impose and collect a license fee of up to \$100 for the use of
18 the Pennsylvania Preferred® trademark in connection with the
19 advertising, display, promotion, packaging, marketing or sale of
20 Pennsylvania-produced agricultural commodities ~~and agricultural~~ ←
21 ~~products.~~

22 ~~(b) Reimbursement of costs. The department is authorized to~~
23 ~~charge a licensee for costs incurred by the department in~~
24 ~~connection with that licensee's participation in any activity,~~
25 ~~trade show, exhibition or other promotional event conducted or~~
26 ~~facilitated by the department. The charge shall reasonably~~
27 ~~reflect the costs incurred by the department in facilitating the~~
28 ~~licensee's participation and may include such costs as~~
29 ~~proportional shares of event registration fees, equipment rental~~
30 ~~fees, display area rental fees and other costs.~~ ←

1 (B) FEE INTERVAL.--A FEE ESTABLISHED UNDER SUBSECTION (A)
2 SHALL BE DUE EACH TIME A PERSON ENTERS INTO A TRADEMARK LICENSE
3 AGREEMENT WITH THE DEPARTMENT AND EACH TIME AN EXISTING
4 TRADEMARK LICENSE AGREEMENT IS RENEWED FOR AN ADDITIONAL ONE-
5 YEAR INTERVAL.

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

11 ~~(d) Fee interval. A fee established under subsection (a)~~ ←
12 ~~shall be due each time a person enters into a trademark license~~
13 ~~agreement with the department and each time an existing~~
14 ~~trademark license agreement is renewed for an additional one~~
15 ~~year interval.~~

16 (D) REIMBURSEMENT OF COSTS.--THE DEPARTMENT IS AUTHORIZED TO ←
17 CHARGE A LICENSEE FOR COSTS INCURRED BY THE DEPARTMENT IN
18 CONNECTION WITH THAT LICENSEE'S PARTICIPATION IN ANY ACTIVITY,
19 TRADE SHOW, EXHIBITION OR OTHER PROMOTIONAL EVENT CONDUCTED OR
20 FACILITATED BY THE DEPARTMENT. THE CHARGE SHALL REASONABLY
21 REFLECT THE COSTS INCURRED BY THE DEPARTMENT IN FACILITATING THE
22 LICENSEE'S PARTICIPATION AND MAY INCLUDE SUCH COSTS AS
23 PROPORTIONAL SHARES OF EVENT REGISTRATION FEES, EQUIPMENT RENTAL
24 FEES, DISPLAY AREA RENTAL FEES AND OTHER COSTS.

25 § 4606. Establishment of fund.

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

29 (1) To promote the licensure and use of the Pennsylvania
30 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)~~ 4605(D).

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

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

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

§ 4608. Duties and authority of department.

(a) Department authority to enter into trademark license agreements.--The department is authorized to enter into a trademark license agreement with any qualified entity. The

1 agreement shall address the conditions under which the qualified
2 entity may make commercial use of the Pennsylvania Preferred®
3 trademark.

4 (b) Department authority to protect commercial value of
5 trademark.--The department shall include, in a trademark license
6 agreement, such terms and requirements as it determines are
7 reasonably necessary to ensure that a licensee and the
8 Pennsylvania-produced agricultural commodities and agricultural ←
9 products it markets under the Pennsylvania Preferred® trademark
10 are:

11 (1) in compliance with all applicable Federal and State
12 standards;

13 (2) produced using current applicable good production
14 practices and good management practices ACCEPTABLE TO THE ←
15 DEPARTMENT; and

16 (3) produced for introduction into commerce so as to
17 create and protect the reputation of commodities and products ←
18 marketed under the Pennsylvania Preferred® trademark as being ←
19 of good quality.

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

23 § 4609. Trademark license agreement, application and licensure
24 process.

25 (a) General rule.--

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

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

1 determination as to whether an applicant is a qualified
2 entity.

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

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

8 (5) If the department determines that an applicant is a
9 qualified entity, it shall offer that qualified entity a
10 trademark license agreement, addressing the conditions under
11 which the qualified entity may make commercial use of the
12 Pennsylvania Preferred® trademark.

13 (6) A trademark license agreement under this chapter
14 shall be of no more than one year's duration and shall
15 contain provisions allowing for the termination of the
16 license agreement by the department upon 60 days' advance
17 written notice to the licensee.

18 (b) Preexisting trademark license agreements.--Any trademark
19 license agreement that is in effect prior to the effective date
20 of this chapter and that authorizes the use of the 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 ~~§ 4610. Pennsylvania-produced agricultural commodity or~~ ←
25 ~~agricultural product~~ QUALIFYING STANDARDS. ←

26 ~~A Pennsylvania-produced agricultural commodity or~~ ←
27 ~~agricultural product~~ includes the following:

28 (1) Fresh unprocessed food, nursery products and other
29 agricultural commodities that:

30 (i) are entirely harvested from a Pennsylvania

location; or

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

(2) Agricultural products where:

(i) the licensee ~~is headquartered~~ HAS A BUSINESS LOCATION within this Commonwealth;

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

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

(3) Processors or manufacturers of agricultural products where:

(i) the licensee ~~is headquartered~~ HAS A BUSINESS LOCATION within this Commonwealth;

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

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

1 (4) Grocery stores, plant nurseries and other retailers
2 where the licensee:

3 (i) ~~is physically located~~ HAS A BUSINESS LOCATION ←
4 within this Commonwealth; and

5 (ii) carries at least 50 different Pennsylvania
6 Preferred® commodities or products.

7 (5) Individual restaurant menu items that include
8 featured Pennsylvania Preferred® ingredients.

9 (6) Restaurants that:

10 (i) ~~are physically located~~ HAVE A BUSINESS LOCATION ←
11 within this Commonwealth; and

12 (ii) offer as many Pennsylvania Preferred® items as
13 is practical given production season restrictions and
14 other business conditions.

15 (7) Indirect program participants, such as distributors,
16 wholesalers and trade associations that agree to promote use
17 of the Pennsylvania Preferred® trademark to their
18 constituencies and to use the Pennsylvania Preferred®
19 trademark only in connection with furthering the purposes of
20 this chapter.

21 § 4611. Civil penalties.

22 In addition to any other remedy available at law or in equity
23 for a violation of a provision of this chapter or a trademark
24 license agreement established under this chapter, the department
25 may assess a civil penalty upon the person responsible for the
26 violation. The civil penalty assessed shall not exceed \$10,000
27 and shall be payable to the Commonwealth and collectible in any
28 manner now or hereafter provided at law for the collection of
29 debt.

30 § 4612. Injunctive relief.

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

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