

## 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,  
SACCONE, SAINATO, SANTONI, SAYLOR, CULVER, SCHRODER, SIMMONS,  
STERN, STEVENSON, SWANGER, TALLMAN, TOBASH, TOEPEL, TOOHIL,  
VEREB AND VULAKOVICH, MAY 2, 2011

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 11, 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:

CHAPTER 46PENNSYLVANIA 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~~ 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, OFFERS FOR SALE, MARKETS, promotes or is ←  
21       involved with any aspect of production, processing, preparation,  
22       promotion or, MARKETING, SALE OR OFFERING FOR sale of ←  
23       Pennsylvania-produced agricultural commodities.

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

25       § 4603. Pennsylvania Preferred® trademark.

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

1 § 4604. Licensee qualification.

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

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

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

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

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

16 (i) in whole or in part at a facility which is  
17 located within this Commonwealth and which is in; AND ←

18 (II) IN WHOLE OR IN PART AT A FACILITY, WHICH, IF  
19 THE AGRICULTURAL COMMODITY IS INTENDED FOR HUMAN  
20 CONSUMPTION, IS IN compliance with 3 Pa.C.S Ch. 57 Subch.  
21 B (relating to food safety) and all applicable Federal  
22 and State food quality, sanitation, safety and labeling  
23 standards regulations; and

24 ~~(ii)~~ (III) the use of which, to the maximum extent ←  
25 possible given production season restrictions or market  
26 availability, is a Pennsylvania-produced agricultural  
27 commodity.

28 (3) Be a person that PROMOTES OR markets an agricultural ←  
29 commodity from a person that meets the provisions of  
30 paragraph (1) or (2).

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

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

11      § 4605. 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 department shall establish the terms and  
17          conditions under which a person may be licensed to use the  
18          Pennsylvania Preferred® trademark. Terms and conditions shall  
19          require a licensee to produce, process, PROMOTE or market an ←  
20          agricultural commodity in a manner acceptable to the  
21          department which protects the reputation of the Pennsylvania  
22          Preferred® trademark.

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

25      (b) Cooperative activities.--The department may engage in  
26      cooperative activities to implement and advance the purposes of  
27      this chapter.

28      § 4606. Trademark license agreement, application and licensure  
29      process.

30      (a) General rule.--

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

3       (2) An application shall be on a form prepared by the  
4       department and shall require identification information and  
5       other information the department deems necessary to determine  
6       if an applicant is a qualified entity.

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

9       (4) The department shall have the discretion to  
10       determine whether a person is a qualified entity for purposes  
11       of this chapter.

12       (5) If the department determines that an applicant is a  
13       qualified entity, it shall offer that qualified entity a  
14       trademark license agreement.

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

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

27       ~~§ 4607. Fees and costs.~~

28       ~~(a) Trademark license fee. The department may impose and~~  
29       ~~collect from a qualified entity a license fee of no more than~~  
30       ~~\$100 annually per license for the use of the Pennsylvania~~



1 Preferred® trademark.

2 (b) Fee interval. A fee established under subsection (a)  
3 shall be due at the time a qualified entity enters into a  
4 trademark license agreement with the department and at the time  
5 an existing trademark license agreement is renewed for an  
6 additional one year interval.

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

12 (d) Reimbursement of costs.

13 § 4607. COSTS.

14 REIMBURSEMENT OF COSTS ARE AS FOLLOWS:

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

24 (2) The department may charge a licensee for costs of  
25 Pennsylvania Preferred® promotional materials provided by the  
26 department at the request of the licensee.

27 § 4608. Pennsylvania Preferred® Trademark Licensing Fund.

28 (a) Establishment.--There is established a IN THE STATE  
29 TREASURY A SPECIAL fund which shall be an interest-bearing  
30 restricted revenue account to be known as the Pennsylvania

Preferred® Trademark Licensing Fund. The following money shall  
be deposited into the fund:

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

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

(3) Funds derived from civil penalties collected by the  
department under section 4609 (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



1 the Pennsylvania Preferred® trademark, prohibiting the  
2 unlawful or unauthorized use of the trademark and enforcing  
3 rights in the trademark.

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

6 § 4609. Civil penalties.

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

14 § 4610. Injunctive relief.

15 In addition to any other remedies provided for under this  
16 chapter, the Attorney General, at the request of the department,  
17 may initiate, in the Commonwealth Court or the court of common  
18 pleas of the county in which the defendant resides or has his  
19 place of business, an action in equity for an injunction to  
20 restrain violations of this chapter or a trademark license  
21 agreement. In the proceeding, the court shall, upon motion of  
22 the Commonwealth, issue a preliminary injunction if it finds  
23 that the defendant is engaging in unlawful conduct under this  
24 chapter or is engaging in conduct which is causing immediate or  
25 irreparable harm to the public. The Commonwealth shall not be  
26 required to furnish bond or other security in connection with  
27 the proceedings. In addition to an injunction, the court, in  
28 equity proceedings, may levy civil penalties as provided under  
29 section 4611 (relating to rules and regulations) 4609 (RELATING  
30 TO CIVIL PENALTIES).



1 § 4611. Rules and regulations.

2 The department shall promulgate rules and regulations  
3 necessary to promote the efficient, uniform and Statewide  
4 administration of this chapter. For two years from the effective  
5 date of this section, the department shall have the power and  
6 authority to promulgate, adopt and use guidelines to implement  
7 the provisions of this chapter. The guidelines shall be  
8 published in the Pennsylvania Bulletin but shall not be subject  
9 to review under section 205 of the act of July 31, 1968  
10 (P.L.769, No.240), referred to as the Commonwealth Documents  
11 Law, sections 204(b) and 301(10) of the act of October 15, 1980  
12 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or  
13 the act of June 25, 1982 (P.L.633, No.181), known as the  
14 Regulatory Review Act. All guidelines shall expire no later than  
15 December 31, 2013, and shall be replaced by regulations which  
16 shall have been promulgated, adopted and published as provided  
17 under law.

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