

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1521 Session of 2019

INTRODUCED BY PASHINSKI, CAUSER, BERNSTINE, A. DAVIS, T. DAVIS, DeLISSIO, FREEMAN, GREINER, HANBIDGE, HERSHEY, HICKERNELL, M. K. KELLER, KINSEY, LONGIETTI, MALAGARI, McNEILL, MILLARD, MOUL, OWLETT, RYAN, SAPPEY, SAYLOR, SNYDER, STRUZZI, WEBSTER, ZIMMERMAN, IRVIN, CIRESI, BURGOS AND RABB, MAY 29, 2019

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 5, 2019

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, in Pennsylvania Preferred® Trademark, providing for
3 military veterans; and making editorial changes.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Chapter 46 of Title 3 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subchapter heading
8 IMMEDIATELY PRECEDING SECTION 4601 to read: <--

9 SUBCHAPTER A

10 GENERAL PROVISIONS

11 Section 2. Chapter 46 of Title 3 is amended by adding a
12 subchapter heading IMMEDIATELY PRECEDING SECTION 4603 to read: <--

13 SUBCHAPTER B

14 PENNSYLVANIA PREFERRED PROGRAM

15 Section 3. Sections 4603, 4604, 4605, 4606 and 4607 of Title
16 3 are renumbered to read:

1 § [4603] 4611. Pennsylvania Preferred® trademark.

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

7 § [4604] 4612. Licensee qualification.

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

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

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

14 (ii) that, if inspected by the department, the USDA,
15 the FDA or an independent certifying agency approved by
16 the department, is approved by the inspecting authority
17 as meeting all applicable quality, sanitation, safety and
18 labeling standards of that inspecting authority.

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

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

23 (ii) in whole or in part at a facility, which, if
24 the agricultural commodity is intended for human
25 consumption, is in compliance with Subchapter B of
26 Chapter 57 (relating to food safety) and all applicable
27 Federal and State food quality, sanitation, safety and
28 labeling standards regulations; and

29 (iii) the use of which, to the maximum extent
30 possible given production season restrictions or market

1 availability, is a Pennsylvania-produced agricultural
2 commodity.

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

6 (4) Be a public eating and drinking place licensed under
7 and in compliance with Subchapter A of Chapter 57 (relating
8 to retail food facility safety) or under the act of August
9 24, 1951 (P.L.1304, No.315), known as the Local Health
10 Administration Law, which offers a menu item that includes an
11 agricultural commodity from a person that meets the
12 provisions of paragraph (1) or (2).

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

16 § [4605] 4613. Duties and authority of department.

17 (a) Department authority to enter into trademark license
18 agreements.--

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

21 (2) The department shall establish the terms and
22 conditions under which a person may be licensed to use the
23 Pennsylvania Preferred® trademark. Terms and conditions shall
24 require a licensee to produce, process, promote or market an
25 agricultural commodity in a manner acceptable to the
26 department which protects the reputation of the Pennsylvania
27 Preferred® trademark.

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

30 (b) Cooperative activities.--The department may engage in

1 cooperative activities to implement and advance the purposes of
2 this chapter.

3 § [4606] 4614. Trademark license agreement, application and
4 licensure process.

5 (a) General rule.--

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

8 (2) An application shall be on a form prepared by the
9 department and shall require identification information and
10 other information the department deems necessary to determine
11 if an applicant is a qualified entity.

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

14 (4) The department shall have the discretion to
15 determine whether a person is a qualified entity for purposes
16 of this chapter.

17 (5) If the department determines that an applicant is a
18 qualified entity, it shall offer that qualified entity a
19 trademark license agreement.

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

26 (b) Preexisting trademark license agreements.--A trademark
27 license agreement that is in effect prior to the effective date
28 of this section and that authorizes the use of a Pennsylvania
29 Preferred® trademark shall remain in effect until it is
30 terminated or until the end of the current contract year,

1 whichever occurs first.

2 § [4607] 4615. Costs.

3 Reimbursement of costs are as follows:

4 (1) The department may charge a licensee for costs
5 incurred by the department in connection with that licensee's
6 participation in any activity, trade show, exhibition or
7 other promotional event conducted or facilitated by the
8 department. A charge shall reasonably reflect the costs
9 incurred by the department in facilitating the licensee's
10 participation and may include such costs as proportional
11 shares of event registration fees, equipment rental fees,
12 display area rental fees and related costs.

13 (2) The department may charge a licensee for costs of
14 Pennsylvania Preferred® promotional materials provided by the
15 department at the request of the licensee.

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

17 § [4608] 4616. Pennsylvania Preferred® Trademark Licensing
18 Fund.

19 (a) Establishment.--There is established in the State
20 Treasury a special fund which shall be an interest-bearing
21 restricted revenue account to be known as the Pennsylvania
22 Preferred® Trademark Licensing Fund. The following money shall
23 be deposited into the fund:

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

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

30 (3) Funds derived from civil penalties collected by the

1 department under section [4609] 4617 (relating to civil
2 penalties).

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

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

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

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

19 (3) To promote Pennsylvania-produced agricultural
20 commodities with respect to which the Pennsylvania Preferred®
21 trademark is licensed.

22 (4) To pay costs associated with monitoring the use of
23 the Pennsylvania Preferred® trademark, prohibiting the
24 unlawful or unauthorized use of the trademark and enforcing
25 rights in the trademark.

26 (4.1) TO PROMOTE PARTICIPATION UNDER THIS CHAPTER BY <--
27 QUALIFIED VETERANS AND QUALIFIED VETERAN BUSINESS ENTITIES.

28 (4.2) TO PROMOTE, ENCOURAGE AND FACILITATE COOPERATION
29 BY THE DEPARTMENT WITH MILITARY, GOVERNMENT OR PRIVATE SECTOR
30 MARKETING EFFORTS THAT IDENTIFY, EMPHASIZE AND ENCOURAGE THE

1 PRODUCTION AND MARKETING OF PENNSYLVANIA-PRODUCED
2 AGRICULTURAL COMMODITIES BY QUALIFIED VETERANS AND QUALIFIED
3 VETERAN BUSINESS ENTITIES.

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

6 (D) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING <--
7 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
8 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

9 "QUALIFIED VETERAN." AS DEFINED UNDER SECTION 4632 (RELATING
10 TO DEFINITIONS).

11 "QUALIFIED VETERAN BUSINESS ENTITY." AS DEFINED UNDER
12 SECTION 4632.

13 Section 5. Section 4609 of Title 3 is renumbered to read:

14 § [4609] 4617. Civil penalties.

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

22 Section 6. Sections 4610 and 4611 of Title 3 are amended to
23 read:

24 § [4610] 4618. Injunctive relief.

25 In addition to any other remedies provided for under this
26 chapter, the Attorney General, at the request of the department,
27 may initiate, in the Commonwealth Court or the court of common
28 pleas of the county in which the defendant resides or has his
29 place of business, an action in equity for an injunction to
30 restrain violations of this chapter or a trademark license

1 agreement. In the proceeding, the court shall, upon motion of
2 the Commonwealth, issue a preliminary injunction if it finds
3 that the defendant is engaging in unlawful conduct under this
4 chapter or is engaging in conduct which is causing immediate or
5 irreparable harm to the public. The Commonwealth shall not be
6 required to furnish bond or other security in connection with
7 the proceedings. In addition to an injunction, the court, in
8 equity proceedings, may levy civil penalties as provided under
9 section [4609] 4617 (relating to civil penalties).

10 § [4611] 4619. Rules and regulations.

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

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

29 SUBCHAPTER C

30 (Reserved)

1 SUBCHAPTER D

2 MILITARY VETERANS

3 Sec.

4 4631. Purpose.

5 4632. Definitions.

6 4633. Qualified veterans AND QUALIFIED VETERAN BUSINESS <--
7 ENTITIES.

8 § 4631. Purpose.

9 The purpose of this subchapter is to:

10 (1) Benefit qualified veterans and qualified veteran
11 business entities that are licensed by the department under
12 Subchapter B (RELATING TO PENNSYLVANIA PREFERRED PROGRAM) by <--
13 allowing and encouraging the use of other trademarks or
14 descriptive labels, packaging or advertisement information to
15 inform consumers that agricultural commodities were produced
16 by veterans of the armed forces of the United States.

17 (2) Encourage qualified veterans and qualified veteran
18 business entities to avail themselves of marketing
19 opportunities for Pennsylvania-produced agricultural
20 commodities through licensure under Subchapter B and
21 partnership with organizations such as the Farmer Veteran
22 Coalition Homegrown By Heroes program and similar programs
23 intended to encourage veterans to farm or to otherwise
24 benefit farmers who are veterans.

25 § 4632. Definitions.

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

29 "Qualified veteran." A qualified entity who:

30 (1) is a veteran of one or more of the armed forces of

1 the United States, including the United States Army, the
2 United States Navy, the United States Marine Corps, the
3 United States Air Force or the United States Coast Guard; and

4 (2) has received an honorable discharge or a general
5 discharge under honorable conditions.

6 "Qualified veteran business entity." A qualified entity to
7 which the following apply:

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

10 (2) Qualified veterans make up 50% or more of the
11 entity's ownership and a minimum of 50% of the entity's
12 management control.

13 § 4633. Qualified veterans and qualified veteran business
14 entities.

15 (a) Encouragement of participation.--The department shall
16 promote participation under this subchapter by qualified
17 veterans and qualified veteran business entities and shall
18 conduct outreach and education efforts to encourage and
19 facilitate veteran participation.

20 (b) Coordination of effort.--The department shall cooperate
21 with military, government or private sector marketing efforts
22 that identify, emphasize and encourage the production and
23 marketing of Pennsylvania-produced agricultural commodities by
24 qualified veterans and qualified veteran business entities and
25 may allow the use of the Pennsylvania Preferred® trademark in a
26 cooperative effort.

27 Section 8. This act shall take effect in 60 days.