

No. 2011-78

AN ACT

HB 1424

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, providing for the establishment, registration, licensing and use of a Pennsylvania Preferred® trademark; establishing the Pennsylvania Preferred® Trademark Licensing Fund; and providing for penalties and for enforcement.

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

Section 1. Title 3 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 46
PENNSYLVANIA PREFERRED® TRADEMARK

Sec.

4601. Short title of chapter.

4602. Definitions.

4603. Pennsylvania Preferred® trademark.

4604. Licensee qualification.

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4611. Rules and regulations.

§ 4601. Short title of chapter.

This chapter shall be known and may be cited as the Pennsylvania Preferred Act.

§ 4602. Definitions.

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

"Agricultural commodity." Any of the following:

(1) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.

(2) Livestock and the products thereof.

(3) Ranch-raised furbearing animals and the products thereof.

(4) Poultry and the products of poultry.

(5) Products commonly raised or produced on farms which are:

(i) intended for human consumption; or

(ii) transported or intended to be transported in commerce.

(6) Processed or manufactured products of products commonly raised or produced on farms which are:

(i) intended for human consumption; or

(ii) transported or intended to be transported in commerce.

"Department." The Department of Agriculture of the Commonwealth.

"FDA." The Food and Drug Administration of the Department of Health and Human Services of the United States.

"Licensee." A qualified entity that is subject to a current Pennsylvania Preferred® trademark license agreement with the department.

"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 artwork as part of the trademark registration.

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

"Qualified entity." A person that produces, processes, prepares, sells, offers for sale, markets, promotes or is involved with any aspect of production, processing, preparation, promotion, marketing, sale or offering for sale of Pennsylvania-produced agricultural commodities.

"USDA." The United States Department of Agriculture.

§ 4603. Pennsylvania Preferred® trademark.

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

§ 4604. Licensee qualification.

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

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

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

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

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

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

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

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

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

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

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

§ 4605. Duties and authority of department.

(a) *Department authority to enter into trademark license agreements.—*

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

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

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

(b) *Cooperative activities.—The department may engage in cooperative activities to implement and advance the purposes of this chapter.*

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

(a) *General rule.—*

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

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

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

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

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

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

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

§ 4607. Costs.

Reimbursement of costs are as follows:

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

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

§ 4608. Pennsylvania Preferred® Trademark Licensing Fund.

(a) *Establishment.—There is established in the State Treasury a special fund which shall be an interest-bearing 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 costs established under section 4607 (relating to 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 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.*

§ 4609. 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 manner provided under law for the collection of debt.

§ 4610. Injunctive relief.

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

§ 4611. Rules and regulations.

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

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

APPROVED—The 5th day of October, A.D. 2011

TOM CORBETT