
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 623 Session of
2019

INTRODUCED BY SCHWANK, COSTA, HUGHES, STREET, FONTANA,
TARTAGLIONE, SABATINA, SANTARSIERO, FARNESE, BREWSTER AND
BAKER, MAY 13, 2019

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, MAY 13, 2019

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, in Pennsylvania Preferred® Trademark, further
3 providing for definitions, renumbering provisions relating to
4 Pennsylvania Preferred® trademark, licensee qualification,
5 duties and authority of department, trademark license
6 agreement, application and licensure process and for costs,
7 further providing for Pennsylvania Preferred® Trademark
8 Licensing Fund, renumbering provisions relating to civil
9 penalties and injunctive relief and further providing for
10 rules and regulations; and providing for Pennsylvania
11 Preferred Organic Program.

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

14 Section 1. Chapter 46 of Title 3 of the Pennsylvania
15 Consolidated Statutes is amended by adding a subchapter heading
16 to read:

17 SUBCHAPTER A

18 GENERAL PROVISIONS

19 Section 2. Section 4602 of Title 3 is amended by adding
20 definitions to read:

21 § 4602. Definitions.

22 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Advisory committee." The Pennsylvania Preferred Organic
4 Advisory Committee established under section 4623 (relating to
5 Pennsylvania Preferred Organic Advisory Committee).

6 * * *

7 "Pennsylvania Preferred® Organic trademark." One or more
8 trademarks that consist of the phrase "Pennsylvania Preferred,"
9 "PA Preferred," "Pennsylvania Preferred Organic" or "PA
10 Preferred Organic" and that may include specific graphic designs
11 or artwork as part of the trademark registration, and that
12 identify the agricultural commodity with respect to which the
13 trademark is used as meeting the requirements of this chapter
14 for Pennsylvania-produced organic agricultural commodities.

15 * * *

16 "USDA National Organic Program." The National Organic
17 Program established under section 6517 of the Organic Foods
18 Production Act of 1990 (Public Law 101-624, 104 Stat. 3935) and
19 any attendant regulations.

20 Section 3. Chapter 46 of Title 3 is amended by adding a
21 subchapter heading to read:

22 SUBCHAPTER B

23 PENNSYLVANIA PREFERRED PROGRAM

24 Section 4. Sections 4603, 4604, 4605, 4606 and 4607 of Title
25 3 are renumbered to read:

26 § [4603] 4611. Pennsylvania Preferred® trademark.

27 The department shall take all actions necessary and
28 appropriate to acquire, create, establish, register, maintain,
29 license, promote and protect a Pennsylvania Preferred® trademark
30 for use on or in connection with the sale, marketing or

1 promotion of a Pennsylvania-produced agricultural commodity.

2 § [4604] 4612. Licensee qualification.

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

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

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

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

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 Subchapter B of
21 Chapter 57 (relating to food safety) and all applicable
22 Federal and State food quality, sanitation, safety and
23 labeling standards regulations; and

24 (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] 4613. 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] 4614. Trademark license agreement, application and
29 licensure 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] 4615. Costs.

28 Reimbursement of costs are as follows:

29 (1) The department may charge a licensee for costs
30 incurred by the department in connection with that licensee's

1 participation in any activity, trade show, exhibition or
2 other promotional event conducted or facilitated by the
3 department. A charge shall reasonably reflect the costs
4 incurred by the department in facilitating the licensee's
5 participation and may include such costs as proportional
6 shares of event registration fees, equipment rental fees,
7 display area rental fees and related costs.

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

11 Section 5. Section 4608 of Title 3 is amended to read:

12 § [4608] 4616. Pennsylvania Preferred® Trademark Licensing
13 Fund.

14 (a) Establishment.--There is established in the State
15 Treasury a special fund which shall be an interest-bearing
16 restricted revenue account to be known as the Pennsylvania
17 Preferred® Trademark Licensing Fund. The following money shall
18 be deposited into the fund:

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

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

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

28 (b) Appropriation.--Money in the fund is appropriated on a
29 continuing basis to the department for the purpose of
30 administering this chapter. All interest and earnings received

1 from investment or deposit of the money in the fund shall be
2 paid into the account for the purpose authorized by this
3 section. Any unexpended money and any interest or earnings on
4 the money in the fund may not be transferred or revert to the
5 General Fund, but shall remain in the account to be used by the
6 department for the purpose specified under this section.

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

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

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

14 (3) To promote Pennsylvania-produced agricultural
15 commodities with respect to which the Pennsylvania Preferred®
16 trademark is licensed.

17 (4) To pay costs associated with monitoring the use of
18 the Pennsylvania Preferred® trademark, prohibiting the
19 unlawful or unauthorized use of the trademark and enforcing
20 rights in the trademark.

21 (5) To promote the Pennsylvania Preferred® Organic
22 Program and its objectives.

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

25 Section 6. Section 4609 of Title 3 is renumbered to read:

26 § [4609] 4617. Civil penalties.

27 In addition to any other remedy available at law or in equity
28 for a violation of a provision of this chapter or a trademark
29 license agreement established under this chapter, the department
30 may assess a civil penalty upon the person responsible for the

1 violation. The civil penalty assessed shall not exceed \$10,000
2 and shall be payable to the Commonwealth and collectible in any
3 manner provided under law for the collection of debt.

4 Section 7. Sections 4610 and 4611 of Title 3 are amended to
5 read:

6 § [4610] 4618. Injunctive relief.

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

22 § [4611] 4619. Rules and regulations.

23 (a) General rule.--The department shall promulgate rules and
24 regulations necessary to promote the efficient, uniform and
25 Statewide administration of this chapter. [For two years from
26 the effective date of this section, the department shall have
27 the power and authority to promulgate, adopt and use guidelines
28 to implement the provisions of this chapter. The guidelines
29 shall be published in the Pennsylvania Bulletin but shall not be
30 subject to review under section 205 of the act of July 31, 1968

1 (P.L.769, No.240), referred to as the Commonwealth Documents
2 Law, sections 204(b) and 301(10) of the act of October 15, 1980
3 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or
4 the act of June 25, 1982 (P.L.633, No.181), known as the
5 Regulatory Review Act. All guidelines shall expire no later than
6 December 31, 2013, and shall be replaced by regulations which
7 shall have been promulgated, adopted and published as provided
8 under law.]

9 (b) Organic standards.--The organic food or product
10 regulations adopted under the Organic Foods Production Act of
11 1990 (Public Law 101-624, 104 Stat. 3935) that are in effect on
12 the effective date of this subsection or that are adopted after
13 the effective date of this subsection shall be the organic
14 standards under which the department shall license qualified
15 entities to make use of the Pennsylvania Preferred® Organic
16 trademark with respect to Pennsylvania-produced organic
17 agricultural commodities, except to the extent the department
18 promulgates regulatory standards that vary from those Federal
19 standards.

20 (c) Regulatory standards.--The secretary may, by regulation,
21 prescribe standards under which the department shall license
22 qualified entities to make use of the Pennsylvania Preferred®
23 trademark with respect to Pennsylvania-produced organic
24 agricultural commodities that vary from regulatory standards
25 promulgated under authority of subsection (b).

26 Section 8. Chapter 46 of Title 3 is amended by adding a
27 subchapter to read:

28 SUBCHAPTER C

29 PENNSYLVANIA PREFERRED ORGANIC PROGRAM

30 Sec.

1 4621. Pennsylvania Preferred® Organic Program.

2 4622. Purpose.

3 4623. Pennsylvania Preferred® Organic Advisory Committee.

4 4624. Licensure for use of trademarks for organic agricultural
5 products.

6 § 4621. Pennsylvania Preferred® Organic Program.

7 The department shall establish, administer and operate a
8 Pennsylvania Preferred® Organic Program.

9 § 4622. Purpose.

10 The purposes of this subchapter shall be to:

11 (1) Establish a program under which qualified producers,
12 processors and marketers of Pennsylvania-produced organic
13 agricultural commodities can be licensed by the department to
14 make use of the Pennsylvania Preferred® Organic trademark
15 with respect to those organic products.

16 (2) Establish licensure standards that require qualified
17 producers described under paragraph (1) to meet or exceed the
18 standards required under the USDA National Organic Program.

19 (3) Establish the Pennsylvania Preferred® Organic
20 trademark as a symbol of product quality and of organic
21 production in accordance with rigorous, state-of-the-science
22 standards for production of organic agricultural commodities.

23 (4) Provide added product value for licensed qualified
24 entities that make use of the Pennsylvania Preferred® Organic
25 trademark.

26 (5) Encourage producers of Pennsylvania-produced organic
27 agricultural commodities to, as a desirable business measure,
28 meet or exceed USDA National Organic Program standards and to
29 pursue licensure to make use of the Pennsylvania Preferred®
30 Organic trademark.

1 (6) Provide the department, the advisory committee
2 established under section 4623 (relating to Pennsylvania
3 Preferred® Organic Program) and Pennsylvania's organic
4 producers greater familiarity with the requirements of the
5 USDA National Organic Program and, in time, pursue USDA
6 approval of the Pennsylvania Preferred® Organic Program as
7 the official organics program in this Commonwealth.

8 (7) Encourage organic production and organic soil-
9 building practices that enhance biodiversity, conserve
10 natural resources and contribute to other public and
11 environmental health benefits.

12 (8) Update this chapter to improve Pennsylvania's
13 competitiveness in organic agricultural commodities.

14 § 4623. Pennsylvania Preferred® Organic Advisory Committee.

15 (a) Establishment.--The secretary shall establish an
16 advisory committee, which shall be known as the Pennsylvania
17 Preferred® Organic Advisory Committee, to advise the secretary
18 with respect to the secretary's responsibilities under this
19 subchapter.

20 (b) Membership.--The following shall apply:

21 (1) Each member of the advisory committee may have an
22 alternate. The composition of the advisory committee shall be
23 as follows:

24 (i) The secretary or a designee, who shall chair the
25 advisory committee.

26 (ii) Six members shall be producers, at least two of
27 whom shall be producers of meat, fowl, fish, dairy
28 products or eggs.

29 (iii) Two members shall be processors.

30 (iv) One member shall be a wholesale distributor.

1 (v) One member shall be a representative of an
2 accredited certifying agency operating in this
3 Commonwealth.

4 (vi) One member shall be a consumer representative.

5 The following shall apply:

6 (A) The consumer representative may not have a
7 financial interest in the direct sales or marketing
8 of the organic product industry.

9 (B) The consumer representative shall be a
10 member or employee of representatives of recognized
11 nonprofit organizations whose principal purpose is
12 the protection of consumer health.

13 (vii) One member shall be an environmental
14 representative. The following shall apply:

15 (A) The environmental representatives may not
16 have a financial interest in the direct sales or
17 marketing of the organic product industry.

18 (B) The environmental representative shall be a
19 member or employee of representatives of recognized
20 nonprofit organizations whose principal purpose is
21 the protection of the environment.

22 (viii) Two members shall be technical
23 representatives with scientific credentials related to
24 agricultural chemicals, toxicology or food science. The
25 following shall apply:

26 (A) The technical representatives shall not have
27 a financial interest in the production, handling,
28 processing or marketing of the organic products
29 industry.

30 (B) The technical representatives may be

1 involved in organic research or technical review,
2 providing that the technical representatives have no
3 financial benefit from results of the research
4 project or technical review.

5 (ix) One member shall be a retail representative.

6 (2) Except for the consumer, environmental and technical
7 representatives described in paragraph (1) (vi), (vii) and
8 (viii), the members of the advisory committee shall have
9 derived a substantial portion of their business income,
10 wages, or salary from services the members provide that
11 directly result in the production, handling, processing or
12 retailing of products sold as organic for at least three
13 years preceding the appointment to the advisory committee.

14 (b) Duties.--The advisory committee shall do the following:

15 (1) Advise the secretary on education, outreach and
16 technical assistance for producers.

17 (2) Advise with respect to the creation of standards
18 under which the department shall license qualified entities
19 to make use of the Pennsylvania Preferred® Organic trademark
20 in connection with the sale, marketing or promotion of
21 Pennsylvania-produced organic agricultural commodities.

22 (3) Advise the secretary on program and regulatory
23 standards for the Pennsylvania Preferred® Organic Program and
24 ways to improve that program, with the objective of
25 establishing standards at least as rigorous as those for the
26 USDA National Organic Program.

27 (4) As requested by the secretary, support organic
28 agriculture through outreach and educational efforts targeted
29 to producers, consumers, academia, Federal regulators and
30 others.

1 (c) Quorum.--Nine members shall constitute a quorum of the
2 advisory committee.

3 (d) Terms.--The secretary shall appoint advisory committee
4 members to an initial one-year term and, thereafter, to terms
5 such that the terms of five members expire each year.

6 § 4624. Licensure for use of trademarks for organic
7 agricultural products.

8 (a) General.--A qualified entity may apply to be licensed by
9 the department to make use of the Pennsylvania Preferred®
10 trademark or the Pennsylvania Preferred® Organic trademark with
11 respect to organic agricultural products.

12 (b) Pennsylvania Preferred® Organic trademark licensure.--
13 The department shall license a qualified entity to use the
14 Pennsylvania Preferred® Organic trademark with respect to
15 agricultural products that meet or exceed the organic standards
16 for those agricultural products as adopted by the USDA National
17 Organic Program and any additional standards established by the
18 department through regulation.

19 Section 9. This act shall take effect in 60 days.