

WEST VIRGINIA LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 535

(SENATORS TUCKER, LAIRD, D. HALL AND MILLER,
ORIGINAL SPONSORS)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

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AN ACT to amend and reenact §19-1A-3a of the Code of West Virginia, 1931, as amended, relating to clarifying the definition of “ginseng”.

Be it enacted by the Legislature of West Virginia:

That §19-1A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3a. Providing criminal penalties for the illegal possession of uncertified ginseng.

1 (a) (1) The Legislature finds that ginseng trade must be
2 controlled in order to protect the survival of wild ginseng as
3 evidenced by its listing in Appendix II of the Convention on
4 International Trade in Endangered Species of Wild Fauna and
5 Flora. It is the policy of this state to regulate the commerce

6 in ginseng in a manner that protects the survival of wild
7 ginseng.

8 (2) For purposes of this section:

9 (A) “Certified” means the ginseng carries a certificate of
10 origin issued by the director which allows the export from
11 West Virginia of ginseng legally harvested in this state;

12 (B) “Commercial use” means to sell or to use ginseng for
13 financial gain;

14 (C) “Cultivated ginseng” means ginseng that is
15 purposefully planted in beds under artificial shade using
16 standard horticultural practices such as mechanical tillage,
17 fertilization, weed control, irrigation and pesticides;

18 (D) “Dealer” means a person who purchases ginseng for
19 purposes of commercial use;

20 (E) “Digger” means a person who digs, collects or gathers
21 wild ginseng by searching woodlands to find the plants;

22 (F) “Director” means the Director of the Division of
23 Forestry;

24 (G) “Division” means the Division of Forestry;

25 (H) “Export” means the movement of ginseng from state
26 to state as well as sending it abroad;

27 (I) “Ginseng” means whole, sliced or parts of roots of
28 cultivated ginseng, woods grown ginseng, wild simulated
29 ginseng and wild ginseng, excluding manufactured parts,
30 products, and derivatives, such as powders, pills, extracts,
31 tonics, teas and confectionary;

32 (J) “Green ginseng” means a fresh wild ginseng root that
33 has not been intentionally subjected to a drying process and
34 from which most natural moisture has not been removed by
35 drying.

36 (K) “Grower” means a person who purposefully plants
37 and grows cultivated ginseng, woods-grown ginseng or wild
38 simulated ginseng for purposes of commercial use: *Provided*,
39 That a grower does not include a digger who plants wild
40 ginseng seed from the wild ginseng plants he or she digs,
41 collects or gathers;

42 (L) “Harvest” means to dig, collect or gather ginseng;

43 (M) “Person” means an individual, corporation,
44 partnership, firm or association;

45 (N) “Rootlets” means woods-grown or wild simulated
46 one to two-year old ginseng roots commonly sold as
47 transplants to growers;

48 (O) “Wild ginseng” means *Panax quinquefolius* L. that is
49 not grown or nurtured by a person regardless of the putative
50 origin of the plants: *Provided*, That wild ginseng may
51 originate from seeds planted by a digger at the same site from
52 which the digger harvests the wild ginseng;

53 (P) “Wild simulated ginseng” means ginseng that is
54 purposefully planted in the woods without a bed being
55 prepared and without the use of any chemical weed, disease
56 or pest control agents;

57 (Q) “Woods-grown ginseng” means ginseng that is
58 purposefully planted in beds prepared in the woods in a
59 manner that uses trees to provide necessary shade and which

60 may be grown with the use of chemical or mechanical weed,
61 disease or pest control agents.

62 (3) (A) The Division of Forestry shall regulate the
63 growing, digging, collecting, gathering, possessing and
64 selling of ginseng.

65 (B) The division may propose rules for legislative
66 approval in accordance with article three, chapter twenty-
67 nine-a of this code to implement the provisions of this section
68 including the amount of any permit fee.

69 (C) For purposes of regulating the growing, harvesting
70 and commercial use of ginseng, a division employee may
71 enter upon any public or private property, other than a
72 dwelling house, at reasonable times, in order to inspect the
73 ginseng operation or records. A person may not obstruct or
74 hinder the employee in the discharge of his or her
75 enforcement duties.

76 (D) All moneys received from permit fees and civil
77 penalties assessed pursuant to this section shall be credited to
78 the special account within the Division of Forestry to be used
79 for the purposes set forth in section three of this article.

80 (E) The site plats required to be submitted to the division
81 and other information identifying the specific location of
82 ginseng plants are not open to public inspection pursuant to
83 article one, chapter twenty-nine-b of this code since they
84 disclose information having a significant commercial value.

85 (b) (1) The digging season for wild ginseng begins on
86 September 1, and ends on November 30, of each year. It is
87 unlawful for a person to dig, collect or gather wild ginseng
88 between December 1, and the thirty-first day of August of the
89 following year.

90 (2) A person digging, collecting or gathering wild
91 ginseng upon the enclosed or posted lands of another person
92 shall first obtain written permission from the landowner,
93 tenant or agent, and shall carry the written permission on his
94 or her person while digging, collecting or gathering wild
95 ginseng upon the enclosed or posted lands. It is unlawful to
96 dig, collect or gather wild ginseng from the property of
97 another without the written permission of the landowner.

98 (3) A person digging, collecting or gathering wild
99 ginseng shall plant the seeds from the wild ginseng plants at
100 the time and at the site from which the wild ginseng is
101 harvested. It is unlawful to remove wild ginseng seeds from
102 the site of collection.

103 (4) It is unlawful to dig, collect or gather wild ginseng
104 less than five years old.

105 (5) A person may not rescue wild ginseng plants
106 endangered by ground-disturbing activities unless he or she
107 has first obtained a moving permit from the division. The
108 person shall provide the reason for moving the plants, the
109 current location of the plants, the proposed new planting site
110 and other information required by the division.

111 (6) It is unlawful to plant ginseng or ginseng seed and to
112 dig, collect or gather ginseng on West Virginia public lands,
113 except by land grant university researchers performing
114 research or demonstration projects regarding the growing,
115 cultivating or harvesting of ginseng: *Provided*, That it is
116 unlawful for anyone to plant ginseng or ginseng seed and to
117 dig, collect or gather ginseng on state wildlife management
118 areas or on state parks.

119 (c) (1) A person may not act as a grower unless he or she
120 has obtained a grower's permit from the division.

121 (2) Prior to planting cultivated, woods-grown or wild
122 simulated ginseng, a grower shall:

123 (A) Submit to the director a plat of the exact planting
124 location prepared by a licensed surveyor or a registered
125 forester as defined in article nineteen, chapter thirty of this
126 code, along with information verifying the name of the
127 landowner: *Provided*, That if the grower is not the landowner,
128 the grower shall also submit written permission from the
129 landowner to grow and harvest cultivated, woods-grown or
130 wild simulated ginseng on that property.

131 (B) Obtain a written determination from the director
132 certifying that the planting area is free from wild ginseng; and

133 (C) Submit other information required by the division.

134 (3) A grower shall keep accurate and complete records on
135 each ginseng planting on forms provided by the division.
136 The records shall be available for inspection by a division
137 employee and shall be submitted to the division at intervals
138 established by rule by the division. A grower shall maintain
139 records for a period of not less than ten years. The
140 information required to be kept shall include:

141 (A) The origin of ginseng seed, rootlets or plants;

142 (B) The location of purposefully planted cultivated, wild
143 simulated and woods-grown ginseng and a site plat of the
144 planting;

145 (C) The original of the director's determination that the
146 site was free from wild ginseng at the time of planting;

147 (D) The date each site was planted;

148 (E) The number of pounds of seeds planted, or the
149 number and age of rootlets, or both; and

150 (F) Other information required by the division.

151 (4) A grower may harvest cultivated ginseng on or after
152 the effective date of this section throughout the year.

153 (5) A grower may harvest wild simulated and woods-
154 grown ginseng from September 1, through November 30, of
155 each year.

156 (6) It is unlawful for a person to dig, collect or gather
157 wild simulated and woods-grown ginseng between December
158 1 and August 31.

159 (7) It is unlawful to dig, collect and gather wild simulated
160 and woods-grown ginseng less than five years old.

161 (8) A grower shall comply with the certification
162 procedures set forth in subdivision (f) of this section.

163 (9) For planting locations in existence prior to July 1,
164 2005, provide proof of having purchased ginseng seed,
165 rootlets or plants for planting for a minimum of one or more
166 of the five years immediately prior to July 1, 2005, and sign
167 a certification that to the best of his or her knowledge, no
168 wild ginseng existed on the site at the time the ginseng was
169 planted: *Provided*, That no grower may certify a planting
170 location in existence prior to July 1, 2005, under this
171 provision after December 31, 2009.

172 (d) (1) A person may not act as a dealer unless he or she
173 has obtained a dealer's permit from the division.

174 (2) A dealer shall keep accurate and complete records on
175 his or her ginseng transactions on forms provided by the
176 division. A dealer is required to maintain a record of all
177 persons, including a digger, grower and dealer, involved in
178 each purchase or sale transaction and shall include the name,
179 address, permit number and a copy of each ginseng
180 certification issued by the division. All records shall be
181 available for inspection by a division employee. A dealer
182 shall maintain records for a period of not less than ten years.
183 In addition, a dealer is required to report the following
184 information to the division monthly:

185 (A) The date of the transaction;

186 (B) The type of ginseng, whether wild, cultivated, woods-
187 grown or wild simulated ginseng;

188 (C) Whether the ginseng is dried or green at the time of
189 the transaction;

190 (D) The weight of the ginseng;

191 (E) The county from which the ginseng was harvested;

192 (F) The identification number from the state ginseng
193 certification; and

194 (G) Other information required by the division.

195 (3) A dealer shall include a West Virginia export
196 certificate, numbered by the division, with each shipment of
197 ginseng transported out-of-state.

198 (4) A dealer may not import out-of-state ginseng into this
199 state unless the ginseng is accompanied by a valid export
200 certificate issued by the state of origin. A dealer must return

201 uncertified ginseng to the state of origin within fifteen
202 calendar days.

203 (5) It is unlawful to include false information on any
204 certificate or record required to be completed or maintained
205 by this section. All ginseng harvested in West Virginia must
206 be certified by the director before being transported or
207 shipped out-of-state.

208 (e) (1) A person may not act as a grower or act as a dealer
209 unless he or she has been issued the appropriate permit by the
210 division. A person must obtain a separate permit for each
211 activity. Permit applications shall be made on forms provided
212 by the division. The application for a permit shall be
213 accompanied by the applicable permit fee. The division shall
214 assign a permit number to each person granted a permit and
215 it shall keep records of the permits issued.

216 (2) Permits expire on December 31 of each year for
217 growers and August 31 of each year for dealers. All permits
218 must be renewed annually. Renewal forms will be mailed to
219 current permit holders. The failure to receive a renewal form
220 does not relieve the permit holder of the obligation to renew.
221 The division may require a late fee when renewal is received
222 more than sixty days after the expiration of the current
223 permit.

224 (3) The permit holder shall notify the division of any
225 changes in the information on the permit.

226 (f) All ginseng harvested in this state shall be certified as
227 to type, whether wild, cultivated, woods grown or wild
228 simulated, and to its origin, weight and lawful harvest. Other
229 information may be required for ginseng to be certified by the
230 division to comply with the Convention on International
231 Trade in Endangered Species of Wild Fauna and Flora to

232 allow for its export: *Provided*, That live one and two-year old
233 cultivated, woods-grown or wild simulated rootlets sold by
234 growers for propagation purposes within the United States
235 are not regarded as harvested and are exempt from the
236 certification requirement. All ginseng, except cultivated
237 ginseng, must be certified or weight receipted by April 1 of
238 the year following harvest: *Provided, however*, That no
239 ginseng may be certified between January 1 through March
240 31 unless the person requesting certification displays a valid
241 permit. It is unlawful for a person to have in his or her
242 possession uncertified wild ginseng from April 1 through
243 August 31.

244 (g) The director shall propose rules for legislative
245 approval in accordance with article three, chapter twenty-
246 nine-a of this code designed to implement the ginseng
247 certification process.

248 (h) The division may, by order entered in accordance
249 with the provisions of article five, chapter twenty-nine-a of
250 this code, deny, suspend or revoke the permit of a grower or
251 dealer and may invalidate an export certificate completed by
252 a dealer when the division finds that a grower or dealer has
253 violated any provision of this section or a legislatively
254 approved rule.

255 (i) The division may assess a civil penalty against a
256 person who violates any provision of this section or a
257 provision of a legislatively approved rule. The division may
258 assess a monetary penalty of not less than \$100 nor more than
259 \$500.

260 (j) Any person violating a provision of this section is
261 guilty of a misdemeanor and, upon conviction thereof, shall
262 be fined not less than \$100 nor more than \$500 for the first
263 offense, and for each subsequent offense, shall be fined not

264 less than \$500 nor more than \$1,000, or confined in jail not
265 more than six months, or both. The court, in imposing the
266 sentence of a person convicted of an offense under this
267 section, shall order the person to forfeit all ginseng involved
268 in the offense.

269 (k) It is the duty of the prosecuting attorney of the county
270 in which the violation occurred to represent the division, to
271 institute proceedings and to prosecute the person charged
272 with the violation.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this
the Day of, 2014.

.....
Governor