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Senate Bill No. 535

(By Senators Tucker, Laird, D. Hall and Miller)

[Introduced February 11, 2014; referred to the Committee on
Natural Resources.]

A BILL to amend and reenact §19-1A-3a of the Code of West Virginia, 1931, as amended, relating to ginseng dealers; and clarifying that persons who buy dried ginseng root for retail sales are not dealers.

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.

(a) (1) The Legislature finds that ginseng trade must be controlled in order to protect the survival of wild ginseng as evidenced by its listing in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

1 It is the policy of this state to regulate the commerce in ginseng
2 in a manner that protects the survival of wild ginseng.

3 (2) For purposes of this section:

4 (A) "Certified" means the ginseng carries a certificate of
5 origin issued by the director which allows the export from West
6 Virginia of ginseng legally harvested in this state;

7 (B) "Commercial use" means to sell or to use ginseng for
8 financial gain;

9 (C) "Cultivated ginseng" means ginseng that is purposefully
10 planted in beds under artificial shade using standard horticultural
11 practices such as mechanical tillage, fertilization, weed control,
12 irrigation and pesticides;

13 (D) "Dealer" means a person who purchases ginseng for purposes
14 of commercial use. "Dealer" does not apply to persons who buy dried
15 ginseng root solely for the purpose of retail sale to consumers in
16 the United States;

17 (E) "Digger" means a person who digs, collects or gathers wild
18 ginseng by searching woodlands to find the plants;

19 (F) "Director" means the Director of the Division of Forestry;

20 (G) "Division" means the Division of Forestry;

21 (H) "Export" means the movement of ginseng from state to state
22 as well as sending it abroad;

23 (I) "Ginseng" means cultivated ginseng, woods grown ginseng,

1 wild simulated ginseng and wild ginseng;

2 (J) "Green ginseng" means a fresh wild ginseng root that has
3 not been intentionally subjected to a drying process and from which
4 most natural moisture has not been removed by drying.

5 (K) "Grower" means a person who purposefully plants and grows
6 cultivated ginseng, woods grown ginseng or wild simulated ginseng
7 for purposes of commercial use: *Provided*, That a grower does not
8 include a digger who plants wild ginseng seed from the wild ginseng
9 plants he or she digs, collects or gathers;

10 (L) "Harvest" means to dig, collect or gather ginseng;

11 (M) "Person" means an individual, corporation, partnership,
12 firm or association;

13 (N) "Rootlets" means woods grown or wild simulated one to two-
14 year old ginseng roots commonly sold as transplants to growers;

15 (O) "Wild ginseng" means *Panax quinquefolius* L. that is not
16 grown or nurtured by a person regardless of the putative origin of
17 the plants: *Provided*, That wild ginseng may originate from seeds
18 planted by a digger at the same site from which the digger harvests
19 the wild ginseng;

20 (P) "Wild simulated ginseng" means ginseng that is
21 purposefully planted in the woods without a bed being prepared and
22 without the use of any chemical weed, disease or pest control
23 agents;

1 (Q) "Woods grown ginseng" means ginseng that is purposefully
2 planted in beds prepared in the woods in a manner that uses trees
3 to provide necessary shade and which may be grown with the use of
4 chemical or mechanical weed, disease or pest control agents.

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

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

11 (C) For purposes of regulating the growing, harvesting and
12 commercial use of ginseng, a division employee may enter upon any
13 public or private property, other than a dwelling house, at
14 reasonable times, in order to inspect the ginseng operation or
15 records. A person may not obstruct or hinder the employee in the
16 discharge of his or her enforcement duties.

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

21 (E) The site plats required to be submitted to the division
22 and other information identifying the specific location of ginseng
23 plants are not open to public inspection pursuant to article one,

1 chapter twenty-nine-b of this code since they disclose information
2 having a significant commercial value.

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

8 (2) A person digging, collecting, or gathering wild ginseng
9 upon the enclosed or posted lands of another person shall first
10 obtain written permission from the landowner, tenant or agent, and
11 shall carry the written permission on his or her person while
12 digging, collecting or gathering wild ginseng upon the enclosed or
13 posted lands. It is unlawful to dig, collect, or gather wild
14 ginseng from the property of another without the written permission
15 of the landowner.

16 (3) A person digging, collecting or gathering wild ginseng
17 shall plant the seeds from the wild ginseng plants at the time and
18 at the site from which the wild ginseng is harvested. It is
19 unlawful to remove wild ginseng seeds from the site of collection.

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

22 (5) A person may not rescue wild ginseng plants endangered by
23 ground-disturbing activities unless he or she has first obtained a

1 moving permit from the division. The person shall provide the
2 reason for moving the plants, the current location of the plants,
3 the proposed new planting site and other information required by
4 the division.

5 (6) It is unlawful to plant ginseng or ginseng seed and to
6 dig, collect or gather ginseng on West Virginia public lands,
7 except by land grant university researchers performing research or
8 demonstration projects regarding the growing, cultivating or
9 harvesting of ginseng: *Provided*, That it is unlawful for anyone to
10 plant ginseng or ginseng seed and to dig, collect, or gather
11 ginseng on state wildlife management areas or on state parks.

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

14 (2) Prior to planting cultivated, woods grown or wild
15 simulated ginseng, a grower shall:

16 (A) Submit to the director a plat of the exact planting
17 location prepared by a licensed surveyor or a registered forester
18 as defined in article nineteen, chapter thirty of this code, along
19 with information verifying the name of the landowner: *Provided*,
20 That if the grower is not the landowner, the grower shall also
21 submit written permission from the landowner to grow and harvest
22 cultivated, woods grown or wild simulated ginseng on that property.

23 (B) Obtain a written determination from the director

1 certifying that the planting area is free from wild ginseng; and

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

3 (3) A grower shall keep accurate and complete records on each
4 ginseng planting on forms provided by the division. The records
5 shall be available for inspection by a division employee and shall
6 be submitted to the division at intervals established by rule by
7 the division. A grower shall maintain records for a period of not
8 less than ten years. The information required to be kept shall
9 include:

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

11 (B) The location of purposefully planted cultivated, wild
12 simulated and woods grown ginseng and a site plat of the planting;

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

15 (D) The date each site was planted;

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

18 (F) Other information required by the division.

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

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

23 (6) It is unlawful for a person to dig, collect or gather wild

1 simulated and woods grown ginseng between December 1, and ~~the~~
2 ~~thirty-first day of~~ August 31.

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

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

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

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

17 (2) A dealer shall keep accurate and complete records on his
18 or her ginseng transactions on forms provided by the division. A
19 dealer is required to maintain a record of all persons, including
20 a digger, grower and dealer, involved in each purchase or sale
21 transaction and shall include the name, address, permit number, and
22 a copy of each ginseng certification issued by the division. All
23 records shall be available for inspection by a division employee.

1 A dealer shall maintain records for a period of not less than ten
2 years. In addition, a dealer is required to report the following
3 information to the division monthly:

4 (A) The date of the transaction;

5 (B) The type of ginseng, whether wild, cultivated, woods grown
6 or wild simulated ginseng;

7 (C) Whether the ginseng is dried or green at the time of the
8 transaction;

9 (D) The weight of the ginseng;

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

11 (F) The identification number from the state ginseng
12 certification; and

13 (G) Other information required by the division.

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

17 (4) A dealer may not import out-of-state ginseng into this
18 state unless the ginseng is accompanied by a valid export
19 certificate issued by the state of origin. A dealer must return
20 uncertified ginseng to the state of origin within fifteen calendar
21 days.

22 (5) It is unlawful to include false information on any
23 certificate or record required to be completed or maintained by

1 this section. All ginseng harvested in West Virginia must be
2 certified by the director before being transported or shipped out-
3 of-state.

4 (e) (1) A person may not act as a grower or act as a dealer
5 unless he or she has been issued the appropriate permit by the
6 division. A person must obtain a separate permit for each
7 activity. Permit applications shall be made on forms provided by
8 the division. The application for a permit shall be accompanied by
9 the applicable permit fee. The division shall assign a permit
10 number to each person granted a permit and it shall keep records of
11 the permits issued.

12 (2) Permits expire on December 31, of each year for growers
13 and ~~the thirty-first day of August~~ 31 of each year for dealers.
14 All permits must be renewed annually. Renewal forms will be mailed
15 to current permit holders. The failure to receive a renewal form
16 does not relieve the permit holder of the obligation to renew. The
17 division may require a late fee when renewal is received more than
18 sixty days after the expiration of the current permit.

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

21 (f) All ginseng harvested in this state shall be certified as
22 to type, whether wild, cultivated, woods grown or wild simulated,
23 and to its origin, weight and lawful harvest. Other information

1 may be required for ginseng to be certified by the division to
2 comply with the Convention on International Trade in Endangered
3 Species of Wild Fauna and Flora to allow for its export: *Provided,*
4 That live one and two-year old cultivated, woods grown or wild
5 simulated rootlets sold by growers for propagation purposes within
6 the United States are not regarded as harvested and are exempt from
7 the certification requirement. All ginseng, except cultivated
8 ginseng, must be certified or weight receipted by April 1 of the
9 year following harvest: *Provided, however,* That no ginseng may be
10 certified between January 1, through the thirty-first day of March
11 unless the person requesting certification displays a valid permit.
12 It is unlawful for a person to have in his or her possession
13 uncertified wild ginseng from April 1 through ~~the thirty-first day~~
14 ~~of~~ August 31.

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

18 (h) The division may, by order entered in accordance with the
19 provisions of article five, chapter twenty-nine-a, deny, suspend or
20 revoke the permit of a grower or dealer and may invalidate an
21 export certificate completed by a dealer when the division finds
22 that a grower or dealer has violated any provision of this section
23 or a legislatively approved rule.

1 (I) The division may assess a civil penalty against a person
2 who violates any provision of this section or a provision of a
3 legislatively approved rule. The division may assess a monetary
4 penalty of not less than \$100 nor more than \$500.

5 (j) Any person violating a provision of this section is guilty
6 of a misdemeanor and, upon conviction thereof, shall be fined not
7 less than \$100 nor more than \$500 for the first offense, and for
8 each subsequent offense, shall be fined not less than \$500 nor more
9 than \$1,000, or confined in jail not more than six months, or both.
10 The court, in imposing the sentence of a person convicted of an
11 offense under this section, shall order the person to forfeit all
12 ginseng involved in the offense.

13 (k) It is the duty of the prosecuting attorney of the county
14 in which the violation occurred to represent the division, to
15 institute proceedings, and to prosecute the person charged with the
16 violation.

NOTE: The purpose of this bill is to clarify that persons who buy dried ginseng root for retail sales are not dealers.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.