

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 535

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

[Originating in the Committee on Natural Resources;
reported February 19, 2014.]

A BILL 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
5 and Flora. It is the policy of this state to regulate the
6 commerce in ginseng in a manner that protects the survival
7 of wild 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
21 gathers wild ginseng by searching woodlands to find the
22 plants;

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

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

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

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

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

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

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

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

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

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

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

58 (Q) “Woods-grown ginseng” means ginseng that is
59 purposefully planted in beds prepared in the woods in a
60 manner that uses trees to provide necessary shade and which
61 may be grown with the use of chemical or mechanical weed,
62 disease or pest control agents.

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

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

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

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

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

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

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

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

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

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

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

118 dig, collect or gather ginseng on state wildlife management
119 areas or on state parks.

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

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

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

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

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

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

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

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

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

149 (D) The date each site was planted;

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

152 (F) Other information required by the division.

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

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

158 (6) It is unlawful for a person to dig, collect or gather
159 wild simulated and woods-grown ginseng between December
160 1 and ~~the thirty-first day~~ of August 31.

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

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

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

172 location in existence prior to July 1, 2005, under this
173 provision after December 31, 2009.

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

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

187 (A) The date of the transaction;

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

190 (C) Whether the ginseng is dried or green at the time of
191 the transaction;

192 (D) The weight of the ginseng;

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

194 (F) The identification number from the state ginseng
195 certification; and

196 (G) Other information required by the division.

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

200 (4) A dealer may not import out-of-state ginseng into this
201 state unless the ginseng is accompanied by a valid export
202 certificate issued by the state of origin. A dealer must return
203 uncertified ginseng to the state of origin within fifteen
204 calendar days.

205 (5) It is unlawful to include false information on any
206 certificate or record required to be completed or maintained
207 by this section. All ginseng harvested in West Virginia must

208 be certified by the director before being transported or
209 shipped out-of-state.

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

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

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

228 (f) All ginseng harvested in this state shall be certified as
229 to type, whether wild, cultivated, woods grown or wild
230 simulated, and to its origin, weight and lawful harvest. Other
231 information may be required for ginseng to be certified by
232 the division to comply with the Convention on International
233 Trade in Endangered Species of Wild Fauna and Flora to
234 allow for its export: *Provided*, That live one and two-year
235 old cultivated, woods-grown or wild simulated rootlets sold
236 by growers for propagation purposes within the United States
237 are not regarded as harvested and are exempt from the
238 certification requirement. All ginseng, except cultivated
239 ginseng, must be certified or weight receipted by April 1 of
240 the year following harvest: *Provided, however*, That no
241 ginseng may be certified between January 1 through March
242 31 unless the person requesting certification displays a valid
243 permit. It is unlawful for a person to have in his or her
244 possession uncertified wild ginseng from April 1 through ~~the~~
245 ~~thirty-first day~~ of August 31.

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

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

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

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

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

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