

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4214

FISCAL
NOTE

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[Introduced January 19, 2018; Referred
to the Committee on Agriculture and Natural
Resources then the Judiciary.]

1 A BILL to amend and reenact §19-1A-3a of the Code of West Virginia, 1931, as amended, and to
 2 amend and reenact §61-3-35 of said code, all relating to increasing penalties for unlawfully
 3 possessing or digging ginseng.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

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 controlled in order to protect the
 2 survival of wild ginseng as evidenced by its listing in Appendix II of the Convention on International
 3 Trade in Endangered Species of Wild Fauna and Flora. It is the policy of this state to regulate the
 4 commerce in ginseng in a manner that protects the survival of wild ginseng.

5 (2) For purposes of this section:

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

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

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

12 (D) "Dealer" means a person who purchases ginseng for purposes of commercial use;

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

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

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

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

19 (I) "Ginseng" means whole, sliced or parts of roots of cultivated ginseng, woods grown

20 ginseng, wild simulated ginseng and wild ginseng, excluding manufactured parts, products, and
21 derivatives, such as powders, pills, extracts, tonics, teas and confectionary;

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

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

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

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

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

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

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

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

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

44 (B) The division may propose rules for legislative approval in accordance with §29A-3-1
45 *et seq.* of this code to implement the provisions of this section including the amount of any permit
46 fee.

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

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

54 (E) The site plats required to be submitted to the division and other information identifying
55 the specific location of ginseng plants are not open to public inspection pursuant to §29B-1-1 *et*
56 *seq.* of this code since they disclose information having a significant commercial value.

57 (b) (1) The digging season for wild ginseng begins on September 1, and ends on
58 November 30, of each year. It is unlawful for a person to dig, collect or gather wild ginseng
59 between December 1, and August 31 of the following year.

60 (2) A person digging, collecting or gathering wild ginseng upon the enclosed or posted
61 lands of another person shall first obtain written permission from the landowner, tenant or agent,
62 and shall carry the written permission on his or her person while digging, collecting or gathering
63 wild ginseng upon the enclosed or posted lands. It is unlawful to dig, collect or gather wild ginseng
64 from the property of another without the written permission of the landowner.

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

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

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

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

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

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

81 (A) Submit to the director a plat of the exact planting location prepared by a licensed
82 surveyor or a registered forester as defined in §30-19-1 *et seq.* of this code, along with information
83 verifying the name of the landowner: *Provided*, That if the grower is not the landowner, the grower
84 shall also submit written permission from the landowner to grow and harvest cultivated, woods-
85 grown or wild simulated ginseng on that property.

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

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

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

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

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

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

99 (D) The date each site was planted;

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

102 (F) Other information required by the division.

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

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

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

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

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

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

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

121 (2) A dealer shall keep accurate and complete records on his or her ginseng transactions
122 on forms provided by the division. A dealer is required to maintain a record of all persons, including
123 a digger, grower and dealer, involved in each purchase or sale transaction and shall include the
124 name, address, permit number and a copy of each ginseng certification issued by the division. All
125 records shall be available for inspection by a division employee. A dealer shall maintain records
126 for a period of not less than ten years. In addition, a dealer is required to report the following
127 information to the division monthly:

128 (A) The date of the transaction;

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

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

131 (D) The weight of the ginseng;

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

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

134 (G) Other information required by the division.

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

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

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

143 (e) (1) A person may not act as a grower or act as a dealer unless he or she has been
144 issued the appropriate permit by the division. A person must obtain a separate permit for each
145 activity. Permit applications shall be made on forms provided by the division. The application for
146 a permit shall be accompanied by the applicable permit fee. The division shall take final action

147 upon all completed permit applications within thirty days of receipt if the application is
148 uncontested, or within ninety days if the application is contested. The division shall assign a permit
149 number to each person granted a permit and it shall keep records of the permits issued.

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

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

157 (f) All ginseng harvested in this state shall be certified as to type, whether wild, cultivated,
158 woods grown or wild simulated, and to its origin, weight and lawful harvest. Other information may
159 be required for ginseng to be certified by the division to comply with the Convention on
160 International Trade in Endangered Species of Wild Fauna and Flora to allow for its export:
161 *Provided*, That live one and two-year old cultivated, woods-grown or wild simulated rootlets sold
162 by growers for propagation purposes within the United States are not regarded as harvested and
163 are exempt from the certification requirement. All ginseng, except cultivated ginseng, must be
164 certified or weight receipted by April 1 of the year following harvest: *Provided, however*, That no
165 ginseng may be certified between January 1 through March 31 unless the person requesting
166 certification displays a valid permit. It is unlawful for a person to have in his or her possession
167 uncertified wild ginseng from April 1 through August 31.

168 (g) The director shall propose rules for legislative approval in accordance with §29A-3-1
169 *et seq.* of this code designed to implement the ginseng certification process.

170 (h) The division may, by order entered in accordance with the provisions of §29A-5-1 *et*
171 *seq.* of this code, deny, suspend or revoke the permit of a grower or dealer and may invalidate an

172 export certificate completed by a dealer when the division finds that a grower or dealer has
173 violated any provision of this section or a legislatively approved rule.

174 (i) The division may assess a civil penalty against a person who violates any provision of
175 this section or a provision of a legislatively approved rule. The division may assess a monetary
176 penalty of not less than ~~\$100~~ \$500 nor more than ~~\$500~~ \$1,000.

177 (j) Any person violating a provision of this section is guilty of a misdemeanor and, upon
178 conviction thereof, shall be fined not less than ~~\$400~~ \$500 nor more than ~~\$500~~ \$1,000 for the first
179 offense, and for each subsequent offense, shall be fined not less than ~~\$500~~ \$1,000 nor more than
180 ~~\$1,000~~ \$2,000 or confined in jail not more than ~~six months~~ one year, or both fined and confined.
181 The court, in imposing the sentence of a person convicted of an offense under this section, shall
182 order the person to forfeit all ginseng involved in the offense.

183 (k) It is the duty of the prosecuting attorney of the county in which the violation occurred
184 to represent the division, to institute proceedings and to prosecute the person charged with the
185 violation.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-35. Digging cultivated ginseng; penalty.

1 (a) It shall be unlawful for any person to dig cultivated ginseng or prospect for the same,
2 on the lands of another without the consent of the owner or owners thereof first obtained. The
3 property must be properly posted with "No Trespassing" signs, "Private Property" signs, or other
4 signs that explain to a person to stay off the property. The signs must be of reasonable size to be
5 read by an average person and must be posted at reasonable intervals of at least two hundred
6 feet around the property.

7 (b) Any person violating this section shall be guilty of a misdemeanor and, upon conviction
8 thereof, shall be fined not less than ~~\$100~~ \$500.

NOTE: The purpose of this bill is to increase penalties for unlawfully possessing or digging ginseng.

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