

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 535**

5 (SENATORS TUCKER, LAIRD, D. HALL AND MILLER, *original sponsors*)

6

7 [Passed March 8, 2014; in effect ninety days from passage.]
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11 AN ACT to amend and reenact §19-1A-3a of the Code of West Virginia,
12 1931, as amended, relating to clarifying the definition of
13 “ginseng”.

14 *Be it enacted by the Legislature of West Virginia:*

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

17 **ARTICLE 1A. DIVISION OF FORESTRY.**

18 **§19-1A-3a. Providing criminal penalties for the illegal possession
19 of uncertified ginseng.**

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

1 in a manner that protects the survival of wild ginseng.

2 (2) For purposes of this section:

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

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

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

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

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

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

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

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

20 (I) "Ginseng" means whole, sliced or parts of roots of
21 cultivated ginseng, woods grown ginseng, wild simulated ginseng and
22 wild ginseng, excluding manufactured parts, products, and
23 derivatives, such as powders, pills, extracts, tonics, teas and
24 confectionary;

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

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

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

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

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

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

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

23 (Q) "Woods-grown ginseng" means ginseng that is purposefully
24 planted in beds prepared in the woods in a manner that uses trees

1 to provide necessary shade and which may be grown with the use of
2 chemical or mechanical weed, disease or pest control agents.

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

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

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

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

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

24 (b) (1) The digging season for wild ginseng begins on

1 September 1, and ends on November 30, of each year. It is unlawful
2 for a person to dig, collect or gather wild ginseng between
3 December 1, and the thirty-first day of August of the following
4 year.

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

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

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

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

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

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

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

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

19 (B) Obtain a written determination from the director
20 certifying that the planting area is free from wild ginseng; and
21 (C) Submit other information required by the division.

22 (3) A grower shall keep accurate and complete records on each
23 ginseng planting on forms provided by the division. The records
24 shall be available for inspection by a division employee and shall

1 be submitted to the division at intervals established by rule by
2 the division. A grower shall maintain records for a period of not
3 less than ten years. The information required to be kept shall
4 include:

- 5 (A) The origin of ginseng seed, rootlets or plants;
- 6 (B) The location of purposefully planted cultivated, wild
7 simulated and woods-grown ginseng and a site plat of the planting;
- 8 (C) The original of the director's determination that the site
9 was free from wild ginseng at the time of planting;
- 10 (D) The date each site was planted;
- 11 (E) The number of pounds of seeds planted, or the number and
12 age of rootlets, or both; and
- 13 (F) Other information required by the division.

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

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

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

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

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

24 (9) For planting locations in existence prior to July 1, 2005,

1 provide proof of having purchased ginseng seed, rootlets or plants
2 for planting for a minimum of one or more of the five years
3 immediately prior to July 1, 2005, and sign a certification that to
4 the best of his or her knowledge, no wild ginseng existed on the
5 site at the time the ginseng was planted: *Provided*, That no grower
6 may certify a planting location in existence prior to July 1, 2005,
7 under this provision after December 31, 2009.

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

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

20 (A) The date of the transaction;

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

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

1 (D) The weight of the ginseng;
2 (E) The county from which the ginseng was harvested;
3 (F) The identification number from the state ginseng
4 certification; and
5 (G) Other information required by the division.

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

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

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

19 (e) (1) A person may not act as a grower or act as a dealer
20 unless he or she has been issued the appropriate permit by the
21 division. A person must obtain a separate permit for each
22 activity. Permit applications shall be made on forms provided by
23 the division. The application for a permit shall be accompanied by
24 the applicable permit fee. The division shall assign a permit

1 number to each person granted a permit and it shall keep records of
2 the permits issued.

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

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

12 (f) All ginseng harvested in this state shall be certified as
13 to type, whether wild, cultivated, woods grown or wild simulated,
14 and to its origin, weight and lawful harvest. Other information
15 may be required for ginseng to be certified by the division to
16 comply with the Convention on International Trade in Endangered
17 Species of Wild Fauna and Flora to allow for its export: *Provided*,
18 That live one and two-year old cultivated, woods-grown or wild
19 simulated rootlets sold by growers for propagation purposes within
20 the United States are not regarded as harvested and are exempt from
21 the certification requirement. All ginseng, except cultivated
22 ginseng, must be certified or weight receipted by April 1 of the
23 year following harvest: *Provided, however*, That no ginseng may be
24 certified between January 1 through March 31 unless the person

1 requesting certification displays a valid permit. It is unlawful
2 for a person to have in his or her possession uncertified wild
3 ginseng from April 1 through August 31.

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

7 (h) The division may, by order entered in accordance with the
8 provisions of article five, chapter twenty-nine-a of this code,
9 deny, suspend or revoke the permit of a grower or dealer and may
10 invalidate an export certificate completed by a dealer when the
11 division finds that a grower or dealer has violated any provision
12 of this section or a legislatively approved rule.

13 (i) The division may assess a civil penalty against a person
14 who violates any provision of this section or a provision of a
15 legislatively approved rule. The division may assess a monetary
16 penalty of not less than \$100 nor more than \$500.

17 (j) Any person violating a provision of this section is guilty
18 of a misdemeanor and, upon conviction thereof, shall be fined not
19 less than \$100 nor more than \$500 for the first offense, and for
20 each subsequent offense, shall be fined not less than \$500 nor more
21 than \$1,000, or confined in jail not more than six months, or both.
22 The court, in imposing the sentence of a person convicted of an
23 offense under this section, shall order the person to forfeit all
24 ginseng involved in the offense.

1 (k) It is the duty of the prosecuting attorney of the county
2 in which the violation occurred to represent the division, to
3 institute proceedings and to prosecute the person charged with the
4 violation.