WEST VIRGINIA CODE CHAPTER 19 ARTICLE 1A

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§19-1A-1. Legislative findings.

The Legislature finds that West Virginia has extensive forest resources and their continued development and expansion is vital to the economic well-being of the state and its people.

The Legislature also finds that the production potential of the state's forest resources remains far greater than the present demand.

The Legislature further finds that the promotion of existing forest products industries and the promotion of new forest products industries would benefit the state in terms of employment and additional revenue to the state.

The Legislature further finds and declares that, to increase employment and boost the state's economy, the limits to the development of the potential of West Virginia forest resources must be reduced through an intensive campaign aimed at making new contacts, developing new and existing markets and increasing public awareness of the advantages of the forest resources in West Virginia.

The Legislature further finds that the state forests are an important resource for silvicultural and scientific research; developed and undeveloped outdoor recreation; propagation of forest trees, fish and wildlife; wildlife and fisheries management; aesthetic preservation; hunting and fishing; timber production; and demonstration of state-of-the-art forestry management and therefor should be managed on a multiple-use basis.

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§19-1A-2. Legislative purposes.

The purposes of this article are to provide for promoting West Virginia products; promoting new forest products industries; developing existing forest products industries; promoting coordination of all state forests resources; advising the Governor and Legislature on all aspects of forestry, the management of state forests for conservation and preservation of wildlife, fish, forest species, natural areas, aesthetic and scenic values and to provide developed and undeveloped outdoor recreational opportunities, and hunting and fishing for the citizens of this state and its visitors.

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§19-1A-3. Division of Forestry; Division Director; duties, powers, dedication of certain moneys; creation of a special revenue account.

The Division of Forestry heretofore created is hereby continued. And, except as otherwise provided in this article, all powers and duties previously exercised by the Director of Natural Resources under subsection (13), section seven, article one and article three, chapter twenty of this code, except those powers and duties relating solely to wildlife areas as described in section three, article three, chapter twenty of this code, heretofore transferred to the Division of Forestry, are hereby continued in the Division of Forestry, except Kanawha State Forest as hereinafter provided. The Division of Forestry has within its jurisdiction and supervision the state forests, other forests and woodland areas, the protection of forest areas from injury and damage by fire, disease, insects and other pestilences and forces, the management of forest areas for natural resources, conservation and undeveloped recreational activities, administration of the southeastern interstate forest fire protection compact and other compacts and agreements relating to forest management and husbandry, and the administration and enforcement of laws relating to the conservation, development, protection, use and enjoyment of all forest land areas of the state consistent with the provisions of sections one and two of this article. All moneys collected from the sale of timber realized through management of the state-owned forests and the sale of seedlings from the tree nurseries shall be paid into the state Treasury and shall be credited to a special account within the Division of Forestry and used exclusively for the purposes of this article and article three, chapter twenty of this code.

The Division of Forestry has jurisdiction to regulate the growing, digging, collecting, gathering, possession and sale of ginseng as provided in section three-a, of this article.

The chief of the Division is the Director of the Division of Forestry who shall be appointed and qualified as provided in section five of this article.

The Director of the Division of Forestry shall study means and methods of implementing the provisions of section fifty-three, Article VI of the Constitution of West Virginia, relating to forest lands, and shall prepare and recommend legislation thereon.

The Division lines within the state Forests between improved recreation areas under the management of the Division of Natural Resources and the demonstration forests under the management of the Division of Forestry, heretofore established by agreement, are hereby continued with the exception of Kanawha State Forest where the entire forest will be managed by and under the jurisdiction of the Division of Natural Resources for multiple uses and the Division of Natural Resources shall continue to provide recreational opportunities, including, but not limited to, mountain-biking trails, hiking trails, horseback-riding trails and hunting, fishing and trapping lands. The forest may not be designated as a state park or state recreation area; however, any sale of timber from Kanawha State Forest shall continue to be prohibited.

In the event of disagreement over the placement of a Division line or dual occupancy of a

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building, the disposition shall be decided by the Legislature's Joint Committee on Government and Finance at a regularly scheduled meeting.

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

(2) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A person digging, collecting or gathering wild ginseng upon the enclosed or posted lands of another person shall first obtain written permission from the landowner, tenant or agent,

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and shall carry the written permission on his or her person while digging, collecting or gathering wild ginseng upon the enclosed or posted lands. It is unlawful to dig, collect or gather wild ginseng from the property of another without the written permission of the landowner.

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

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

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

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

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

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

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

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

(C) Submit other information required by the division.

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

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

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

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

(D) The date each site was planted;

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

(F) Other information required by the division.

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

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

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

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

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

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

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

(2) A dealer shall keep accurate and complete records on his or her ginseng transactions on forms provided by the division. A dealer is required to maintain a record of all persons, including a digger, grower and dealer, involved in each purchase or sale transaction and shall include the name, address, a photocopy of a valid photo identification card issued by the West Virginia Division of Motor Vehicles, any other state, or the federal government, permit number and a copy of each ginseng certification issued by the division. All records shall be available for inspection by a division employee. A dealer shall maintain records for a period of not less than ten years. In addition, a dealer is required to report the following information to the division monthly:

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(A) The date of the transaction;

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

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

(D) The weight of the ginseng;

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

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

(G) Other information required by the division.

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

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

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

(e) (1) A person may not act as a grower or act as a dealer unless he or she has been issued the appropriate permit by the division. A person must obtain a separate permit for each activity. Permit applications shall be made on forms provided by the division. The application for a permit shall be accompanied by the applicable permit fee. The division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested. The division shall assign a permit number to each person granted a permit and it shall keep records of the permits issued.

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

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

(f) All ginseng harvested in this state shall be certified as to type, whether wild, cultivated, woods-grown or wild simulated, and to its origin, weight and lawful harvest. Other information may be required for ginseng to be certified by the division to comply with the

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

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

(h) The division may, by order entered in accordance with the provisions of §29A-5-1 et seq. of this code, deny, suspend or revoke the permit of a grower or dealer and may invalidate an export certificate completed by a dealer when the division finds that a grower or dealer has violated any provision of this section or a legislatively approved rule.

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

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

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

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§19-1A-3b. Timber theft; investigations; criminal and civil penalties.

(a) Timber theft is the misappropriation or taking of timber belonging to another, or proceeds derived from the sale of timber, either taken without the consent of the owner, or by means of fraudulent conduct, practices, or representations, with the intent to deprive the owner permanently of the timber or proceeds derived therefrom.

(b) The Division of Forestry has the primary responsibility for the collection, preparation, and central registry of information relating to timber theft. The division has the authority to investigate and enforce the provisions of this section when violations of the provisions of §61-3-52 of this code occur.

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§19-1A-4. Additional duties of the Director of the Division of Forestry generally.

(a) The director shall:

(1) Develop, promote and advance the growth of the forest products industries of this state;

(2) Cooperate with educational institutions, development agencies and private and public organizations to promote the expansion of the forest products industries of this state in local and global markets;

(3) Conduct research on marketing and developing forest products and forest products industries; conserving, managing and utilizing the state's forest land and its multiple uses; and improving the forestry knowledge and practices of private landowners; and

(4) Compile its findings and recommendations, and disseminate the results of its research to the public, the forest products industry, the Governor and the Legislature.

(b) The director has the power to carry out and effectuate the purposes of this article, article one-b of this chapter and article three of chapter twenty of this code, including the power to:

(1) Accept and use gifts, donations or contributions from individuals, organizations or corporations, and to acquire by gift, lease or purchase real estate;

(2) Establish law-enforcement practices and procedures to address the law-enforcement requirements of the division;

(3) To promulgate rules and regulations, subject to the provisions of chapter twenty-nine-a of this code; and

(4) Enter into stewardship end-result contract projects with the United States Forest Service by written agreement or contract and submit an annual report to the Joint Committee on Government and Finance, no later than the first day of October each year, specifying the locations of projects, the amount of funding received, number of contracts and the purpose of each contract.

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§19-1A-5. Director of Division of Forestry; appointment; qualifications.

The Director of the Division of Forestry shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the Governor. The director shall be a graduate of a school of forestry accredited by the Society of American Foresters and have a minimum of ten years' experience in forest management. The director shall be paid an annual salary as provided in section two-a, article seven, chapter six of this code: Provided, That the director's salary shall be paid solely from budget appropriations to the division.

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§19-1A-6.

Repealed.

Acts, 1994 Reg. Sess., Ch. 119.

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