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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2663

(By Delegates Beach, Stemple, Proudfoot,
Swartzmiller, Williams, Anderson and Schoen)



Passed April 9, 2005

In Effect Ninety Days from Passage

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H. B. 2663

(BY DELEGATES BEACH, STEMPLE, PROUDFOOT,
SWARTZMILLER, WILLIAMS, ANDERSON AND SCHOEN)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §19-1A-3 and §19-1A-3a of the Code of West Virginia, 1931, as amended, all relating to digging, growing, collecting, gathering, possessing and selling ginseng; defining certain terms; authorizing Division of Forestry to regulate ginseng; providing rule-making authority; establishing ginseng harvest seasons; requiring permits to grow or dig ginseng, or to act as dealer; providing exceptions to the permit requirement; setting forth other permit requirements; requiring records be kept; authorizing certain inspections; requiring ginseng to be certified; providing for denial, suspension or revocation of permit; and establishing civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §19-1A-3 and §19-1A-3a of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. DIVISION OF FORESTRY.

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

1 The Division of Forestry heretofore created is hereby
2 continued. And, except as otherwise provided in this article, all
3 powers and duties previously exercised by the Director of
4 Natural Resources under subsection (13), section seven, article
5 one and article three, chapter twenty of this code, except those
6 powers and duties relating solely to wildlife areas as described
7 in section three, article three, chapter twenty of this code,
8 heretofore transferred to the Division of Forestry, are hereby
9 continued in the Division of Forestry, except Kanawha State
10 Forest as hereinafter provided. The Division of Forestry has
11 within its jurisdiction and supervision the state forests, other
12 forests and woodland areas, the protection of forest areas from
13 injury and damage by fire, disease, insects and other pestilences
14 and forces, the management of forest areas for natural re-
15 sources, conservation and undeveloped recreational activities,
16 administration of the southeastern interstate forest fire protec-
17 tion compact and other compacts and agreements relating to
18 forest management and husbandry, and the administration and
19 enforcement of laws relating to the conservation, development,
20 protection, use and enjoyment of all forest land areas of the
21 state consistent with the provisions of sections one and two of
22 this article. All moneys collected from the sale of timber
23 realized through management of the state-owned forests and the
24 sale of seedlings from the tree nurseries shall be paid into the
25 State Treasury and shall be credited to a special account within
26 the Division of Forestry and used exclusively for the purposes
27 of this article and article three, chapter twenty of this code.

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

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

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

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

53 In the event of disagreement over the placement of a
54 Division line or dual occupancy of a building, the disposition
55 shall be decided by the Legislature's Joint Committee on
56 Government and Finance at a regularly scheduled meeting.

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

7 (2) For purposes of this section:

8 (i) "Certified" means the ginseng carries a certificate of
9 origin issued by the Director which allows the export from
10 West Virginia of ginseng legally harvested in this state;

11 (ii) "Commercial use" means to sell or to use ginseng for
12 financial gain;

13 (iii) "Cultivated ginseng" means ginseng that is purpose-
14 fully planted in beds under artificial shade using standard
15 horticultural practices such as mechanical tillage, fertilization,
16 weed control, irrigation and pesticides;

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

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

21 (vi) "Director" means the Director of the Division of
22 Forestry;

23 (vii) "Division" means the Division of Forestry;

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

26 (ix) "Ginseng" means cultivated ginseng, woods grown
27 ginseng, wild simulated ginseng and wild ginseng;

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

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

38 (xii) "Harvest" means to dig, collect or gather ginseng;

39 (xiii) "Person" means an individual, corporation, partner-
40 ship, firm or association;

41 (xiv) "Rootlets" means woods grown or wild simulated one
42 to two-year old ginseng roots commonly sold as transplants to
43 growers;

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

49 (xvi) "Wild simulated ginseng" means ginseng that is
50 purposefully planted in the woods without a bed being prepared
51 and without the use of any chemical weed, disease or pest
52 control agents;

53 (xvii) "Woods grown ginseng" means ginseng that is
54 purposefully planted in beds prepared in the woods in a manner
55 that uses trees to provide necessary shade and which may be
56 grown with the use of chemical or mechanical weed, disease or
57 pest control agents.

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

61 (ii) The Division may propose rules for legislative approval
62 in accordance with article three, chapter twenty-nine-a of this
63 code to implement the provisions of this section including the
64 amount of any permit fee.

65 (iii) For purposes of regulating the growing, harvesting and
66 commercial use of ginseng, a Division employee may enter
67 upon any public or private property, other than a dwelling
68 house, at reasonable times, in order to inspect the ginseng
69 operation or records. No person may obstruct or hinder the
70 employee in the discharge of his or her enforcement duties.

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

75 (v) The site plats required to be submitted to the Division
76 and other information identifying the specific location of
77 ginseng plants are not open to public inspection pursuant to
78 article one, chapter twenty-nine-b of this code since they
79 disclose information having a significant commercial value.

80 (b) (1) The digging season for wild ginseng begins on the
81 first day of September and ends on the thirtieth day of Novem-
82 ber of each year. It is unlawful for a person to dig, collect, or
83 gather wild ginseng between the first day of December and the
84 thirty-first day of August of the following year.

85 (2) A person digging, collecting, or gathering wild ginseng
86 upon the enclosed or posted lands of another person shall first
87 obtain written permission from the landowner, tenant or agent,
88 and shall carry the written permission on his or her person

89 while digging, collecting or gathering wild ginseng upon the
90 enclosed or posted lands. It is unlawful to dig, collect, or gather
91 wild ginseng from the property of another without the written
92 permission of the landowner.

93 (3) A person digging, collecting or gathering wild ginseng
94 shall plant the seeds from the wild ginseng plants at the time
95 and at the site from which the wild ginseng is harvested. It is
96 unlawful to remove wild ginseng seeds from the site of collec-
97 tion.

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

100 (5) No person may rescue wild ginseng plants endangered
101 by ground-disturbing activities unless he or she has first
102 obtained a moving permit from the Division. The person shall
103 provide the reason for moving the plants, the current location of
104 the plants, the proposed new planting site and other information
105 required by the Division.

106 (6) It is unlawful to plant ginseng or ginseng seed and to
107 dig, collect or gather ginseng on West Virginia public lands.

108 (c) (1) No person may act as a grower unless he or she has
109 obtained a grower's permit from the Division.

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

112 (i) Submit to the Director a plat of the exact planting
113 location prepared by a licensed surveyor or a registered forester
114 as defined in article nineteen, chapter thirty of this code, along
115 with information verifying the name of the landowner: *Pro-*
116 *vided*, That if the grower is not the landowner, the grower shall
117 also submit written permission from the landowner to grow and

118 harvest cultivated, woods grown or wild simulated ginseng on
119 that property;

120 (ii) Obtain a written determination from the Director
121 certifying that the planting area is free from wild ginseng; and

122 (iii) Submit other information required by the Division.

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

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

131 (ii) The location of purposefully planted cultivated, wild
132 simulated and woods grown ginseng and a site plat of the
133 planting;

134 (iii) The original of the Director's determination that the
135 site was free from wild ginseng at the time of planting;

136 (iv) The date each site was planted;

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

139 (vi) Other information required by the Division.

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

142 (5) A grower may harvest wild simulated and woods grown
143 ginseng from the first day of September through the thirtieth
144 day of November of each year.

145 (6) It is unlawful for a person to dig, collect or gather wild
146 simulated and woods grown ginseng between the first day of
147 December and the thirty-first day of August.

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

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

152 (d) (1) No person may act as a dealer unless he or she has
153 obtained a dealer's permit from the Division.

154 (2) A dealer shall keep accurate and complete records on
155 his or her ginseng transactions on forms provided by the
156 Division. A dealer is required to maintain a record of all
157 persons, including a digger, grower and dealer, involved in each
158 purchase or sale transaction and shall include the name,
159 address, permit number, and a copy of each ginseng certifica-
160 tion issued by the Division. All records shall be available for
161 inspection by a Division employee. A dealer shall maintain
162 records for a period of not less than ten years. In addition, a
163 dealer is required to report the following information to the
164 Division monthly:

165 (i) The date of the transaction;

166 (ii) The type of ginseng, whether wild, cultivated, woods
167 grown or wild simulated ginseng;

168 (iii) Whether the ginseng is dried or green at the time of the
169 transaction;

170 (iv) The weight of the ginseng;

171 (v) The county from which the ginseng was harvested;

172 (vi) The identification number from the state ginseng
173 certification; and

174 (vii) Other information required by the Division.

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

178 (4) No dealer may import out-of-state ginseng into this state
179 unless the ginseng is accompanied by a valid export certificate
180 issued by the state of origin. A dealer must return uncertified
181 ginseng to the state of origin within fifteen calendar days.

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

187 (e) (1) No person may dig wild ginseng, or act as a grower,
188 or act as a dealer unless he or she has been issued the appropri-
189 ate permit by the Division. A person must obtain a separate
190 permit for each activity. Permit applications shall be made on
191 forms provided by the Division. The application for a permit
192 shall be accompanied by the applicable permit fee. The Divi-
193 sion shall assign a permit number to each person granted a
194 permit and it shall keep records of the permits issued.

195 (2) Permits expire on the thirty-first day of December of
196 each year and must be renewed annually. Renewal forms will
197 be mailed to current permit holders. The failure to receive a
198 renewal form does not relieve the permit holder of the obliga-
199 tion to renew. The Division may require a late fee when
200 renewal is received more than sixty days after the expiration of
201 the current permit.

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

204 (f)(1) All ginseng harvested in this state shall be certified
205 as to type, whether wild, cultivated, woods grown or wild
206 simulated, and to its origin, weight and lawful harvest. Other
207 information may be required for ginseng to be certified by the
208 Division to comply with the Convention on International Trade
209 in Endangered Species of Wild Fauna and Flora to allow for its
210 export: *Provided*, That live one and two-year old cultivated,
211 woods grown or wild simulated rootlets sold by growers for
212 propagation purposes within the United States are not regarded
213 as harvested and are exempt from the certification requirement.
214 All ginseng, except cultivated ginseng, must be certified or
215 weight receipted by the first day of April of the year following
216 harvest: *Provided*, That no ginseng may be certified between
217 the first day of January through the thirty-first day of March
218 unless the person requesting certification displays a valid
219 permit. It is unlawful for a person to have in his or her posses-
220 sion uncertified wild ginseng from the first day of April through
221 the thirty-first day of August.

222 (2) The Director shall propose rules for legislative approval
223 in accordance with article three, chapter twenty-nine-a of this
224 code designed to implement the ginseng certification process.

225 (g) (1) The Division may, by order entered in accordance
226 with the provisions of article five, chapter twenty-nine-a, deny,
227 suspend or revoke the permit of a grower or dealer and may
228 invalidate an export certificate completed by a dealer when the
229 Division finds that a grower or dealer has violated any provi-
230 sion of this section or a legislatively approved rule.

231 (2) The Division may assess a civil penalty against a person
232 who violates any provision of this section or a provision of a
233 legislatively approved rule. The Division may assess a mone-

234 tary penalty of not less than one hundred dollars nor more than
235 five hundred dollars.

236 (h) (1) Any person violating a provision of this section is
237 guilty of a misdemeanor and, upon conviction thereof, shall be
238 fined not less than one hundred dollars nor more than five
239 hundred dollars for the first offense, and for each subsequent
240 offense, shall be fined not less than five hundred dollars nor
241 more than one thousand dollars, or confined in jail not more
242 than six months, or both. The court, in imposing the sentence of
243 a person convicted of an offense under this section, shall order
244 the person to forfeit all ginseng involved in the offense.

245 (2) It is the duty of the prosecuting attorney of the county
246 in which the violation occurred to represent the Division, to
247 institute proceedings, and to prosecute the person charged with
248 the violation.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clayton White
Chairman Senate Committee

D. Rick Bury
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

David Holmes
Clerk of the Senate

Bruce M. Bell
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *is approved* this the *29th*
day of *April*, 2005.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 11:00am