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
SEC

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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.

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

§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:

(i) “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;

(ii) “Commercial use” means to sell or to use ginseng for
financial gain;

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

(iv) “Dealer” means a person who purchases ginseng for
purposes of commercial use;

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

(vi) “Director” means the Director of the Division of
Forestry;

(vii) “Division” means the Division of Forestry;

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

(ix) “Ginseng” means cultivated ginseng, woods grown
ginseng, wild simulated ginseng and wild ginseng;
(x) “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.

(xi) “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;

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

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

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

(xv) “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;

(xvi) “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;

(xvii) “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) (i) The Division of Forestry shall regulate the growing, digging, collecting, gathering, possessing and selling of ginseng.

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

(iii) 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. No person may obstruct or hinder the employee in the discharge of his or her enforcement duties.

(iv) 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.

(v) 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 article one, chapter twenty-nine-b of this code since they disclose information having a significant commercial value.

(b) (1) The digging season for wild ginseng begins on the first day of September and ends on the thirtieth day of November of each year. It is unlawful for a person to dig, collect, or gather wild ginseng between the first day of December and the thirty-first day of August 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, 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 collec-
tion.

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

(5) No person may 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.

(c) (1) No person may 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:

(i) Submit to the Director a plat of the exact planting
location prepared by a licensed surveyor or a registered forester
as defined in article nineteen, chapter thirty 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
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...harvest cultivated, woods grown or wild simulated ginseng on that property;

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

(iii) 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:

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

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

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

(iv) The date each site was planted;

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

(vi) 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 the first day of September through the thirtieth day of November of each year.
(6) It is unlawful for a person to dig, collect or gather wild simulated and woods grown ginseng between the first day of December and the thirty-first day of August.

(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.

(d) (1) No person may 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, 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:

(i) The date of the transaction;

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

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

(iv) The weight of the ginseng;

(v) The county from which the ginseng was harvested;
(vi) The identification number from the state ginseng certification; and

(vii) 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) No dealer may 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) No person may dig wild ginseng, or 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 assign a permit number to each person granted a permit and it shall keep records of the permits issued.

(2) Permits expire on the thirty-first day of December of each year and 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)(1) 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 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 the first day of April of the year following harvest: Provided, That no ginseng may be certified between the first day of January through the thirty-first day of March 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 the first day of April through the thirty-first day of August.

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

(g)(1) The Division may, by order entered in accordance with the provisions of article five, chapter twenty-nine-a, 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.

(2) 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 mone-
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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.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the day of , 2005.

Governor
PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 11:00 am