

HB 4444 S

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4444**

(By Mr. Speaker, (Mr. Kiss), and Delegates Cann,  
Stemple, Pethtel, Swartzmiller and H. K. White)



Passed March 10, 2006

In Effect Ninety Days from Passage

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**H. B. 4444**

(BY MR. SPEAKER, (MR. KISS), AND DELEGATES CANN,  
STEMPLE, PETHTEL, SWARTZMILLER AND H. K. WHITE)

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AN ACT to amend and reenact §19-1A-3a of the Code of West Virginia, 1931, as amended, relating to permitting land grant university researchers performing research to plant ginseng seed and to dig, collect or gather ginseng on state public lands; prohibiting cultivation on state parks or wildlife management areas; providing exceptions to the permit requirements for growing and digging ginseng; allowing for certification of existing ginseng plantings; and establishing an annual expiration date for ginseng dealer permits.

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

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

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

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

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

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

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

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

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

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

28 (J) "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 (K) "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 (L) "Harvest" means to dig, collect or gather ginseng;

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

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

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

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

61 (B) 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 (C) 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. A person may not obstruct or hinder the  
70 employee in the discharge of his or her enforcement duties.

71 (D) 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 (E) 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) A person may not rescue wild ginseng plants endan-  
101 gered 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 except by land grant university researchers performing research  
109 or demonstration projects regarding the growing, cultivating or  
110 harvesting of ginseng: *Provided*, That it is unlawful for anyone  
111 to plant ginseng or ginseng seed and to dig, collect, or gather  
112 ginseng on state wildlife management areas or on state parks.

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

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

117 (A) Submit to the director a plat of the exact planting  
118 location prepared by a licensed surveyor or a registered forester  
119 as defined in article nineteen, chapter thirty of this code, along  
120 with information verifying the name of the landowner: *Pro-*  
121 *vided*, That if the grower is not the landowner, the grower shall  
122 also submit written permission from the landowner to grow and  
123 harvest cultivated, woods grown or wild simulated ginseng on  
124 that property.

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

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

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

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

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

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

141 (D) The date each site was planted;

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

144 (F) Other information required by the division.

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

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

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

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

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

157 (9) For planting locations in existence prior to the first day  
158 of July, two thousand five, provide proof of having purchased  
159 ginseng seed, rootlets, or plants for planting for a minimum of  
160 one or more of the five years immediately prior to the first day  
161 of July, two thousand five, and sign a certification that to the  
162 best of his or her knowledge, no wild ginseng existed on the site  
163 at the time the ginseng was planted: *Provided*, That no grower  
164 may certify a planting location in existence prior to the first day  
165 of July, two thousand and five under this provision after the  
166 thirty-first day of December, two thousand nine.

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



169 (2) A dealer shall keep accurate and complete records on  
170 his or her ginseng transactions on forms provided by the  
171 division. A dealer is required to maintain a record of all  
172 persons, including a digger, grower and dealer, involved in each  
173 purchase or sale transaction and shall include the name,  
174 address, permit number, and a copy of each ginseng certifica-  
175 tion issued by the division. All records shall be available for  
176 inspection by a division employee. A dealer shall maintain  
177 records for a period of not less than ten years. In addition, a  
178 dealer is required to report the following information to the  
179 division monthly:

180 (A) The date of the transaction;

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

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

185 (D) The weight of the ginseng;

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

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

189 (G) Other information required by the division.

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

193 (4) A dealer may not import out-of-state ginseng into this  
194 state unless the ginseng is accompanied by a valid export  
195 certificate issued by the state of origin. A dealer must return

196 uncertified ginseng to the state of origin within fifteen calendar  
197 days.

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

203 (e) (1) A person may not act as a grower or act as a dealer  
204 unless he or she has been issued the appropriate permit by the  
205 division. A person must obtain a separate permit for each  
206 activity. Permit applications shall be made on forms provided  
207 by the division. The application for a permit shall be accompa-  
208 nied by the applicable permit fee. The division shall assign a  
209 permit number to each person granted a permit and it shall keep  
210 records of the permits issued.

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

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

221 (f) All ginseng harvested in this state shall be certified as to  
222 type, whether wild, cultivated, woods grown or wild simulated,  
223 and to its origin, weight and lawful harvest. Other information  
224 may be required for ginseng to be certified by the division to  
225 comply with the Convention on International Trade in Endan-  
226 gered Species of Wild Fauna and Flora to allow for its export:  
227 *Provided*, That live one and two-year old cultivated, woods

228 grown or wild simulated rootlets sold by growers for propaga-  
229 tion purposes within the United States are not regarded as  
230 harvested and are exempt from the certification requirement.  
231 All ginseng, except cultivated ginseng, must be certified or  
232 weight receipted by the first day of April of the year following  
233 harvest: *Provided, however,* That no ginseng may be certified  
234 between the first day of January through the thirty-first day of  
235 March unless the person requesting certification displays a  
236 valid permit. It is unlawful for a person to have in his or her  
237 possession uncertified wild ginseng from the first day of April  
238 through the thirty-first day of August.

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

242 (h) The division may, by order entered in accordance with  
243 the provisions of article five, chapter twenty-nine-a, deny,  
244 suspend or revoke the permit of a grower or dealer and may  
245 invalidate an export certificate completed by a dealer when the  
246 division finds that a grower or dealer has violated any provision  
247 of this section or a legislatively approved rule.

248 (i) The division may assess a civil penalty against a person  
249 who violates any provision of this section or a provision of a  
250 legislatively approved rule. The division may assess a monetary  
251 penalty of not less than one hundred dollars nor more than five  
252 hundred dollars.

253 (j) Any person violating a provision of this section is guilty  
254 of a misdemeanor and, upon conviction thereof, shall be fined  
255 not less than one hundred dollars nor more than five hundred  
256 dollars for the first offense, and for each subsequent offense,  
257 shall be fined not less than five hundred dollars nor more than  
258 one thousand dollars, or confined in jail not more than six  
259 months, or both. The court, in imposing the sentence of a

260 person convicted of an offense under this section, shall order  
261 the person to forfeit all ginseng involved in the offense.

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

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

*Clancy White*  
Chairman Senate Committee

*W. Brown*  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Daniel P. Gibbs*  
Clerk of the Senate

*Bryan M. Smith*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*Robert L. Williams*  
Speaker of the House of Delegates

The within is approved this the 4<sup>th</sup>  
day of April, 2006.

*[Signature]*  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 27 2006

Time 4:15 pm