WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 535

(Senators Tucker, Laird, D. Hall and Miller, ORIGINAL SPONSORS)

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

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 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;
“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.

“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;

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

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

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

“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;

“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;

“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 article three, chapter twenty-nine-a 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 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 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 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 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 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 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;

(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 woodsgrown 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 woodsgrown ginseng between December 1 and August 31.

(7) It is unlawful to dig, collect and gather wild simulated and woodsgrown 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, 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:

(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
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 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 article three, chapter twenty-
nine-a of this code designed to implement the ginseng
certification process.

(h) The division may, by order entered in accordance
with the provisions of article five, chapter twenty-nine-a 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 $100 nor more than
$500.

(j) Any person violating a provision of this section is
guilty of a misdemeanor and, upon conviction thereof, shall
be fined not less than $100 nor more than $500 for the first
offense, and for each subsequent offense, shall be fined not
less than $500 nor more than $1,000, or confined in jail not
more than six months, or both. 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Originated in the Senate.

In effect ninety days from passage.

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The within is approved this the 28th Day of March, 2014.
PRESENTED TO THE GOVERNOR

MAR 27 2014

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