

Act No. 184
Public Acts of 1994
Approved by the Governor
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Reps Randall Gnodtke, Anthony Bender and McNutt

ENROLLED HOUSE BILL No. 5438

AN ACT to regulate the harvest sale and distribution of American ginseng to provide for licensing and to prescribe penalties

The People of the State of Michigan enact

Sec 1 This act shall be known and may be cited as the Michigan ginseng act

Sec 3 As used in this act

- (a) Buy means to purchase trade or barter or to offer to purchase trade or barter
- (b) Collect means the harvest of wild ginseng
- (c) Collector means a person who collects wild ginseng
- (d) Cultivated ginseng' means ginseng growing or grown in managed beds under artificial or natural shade and cultivated according to recognized ginseng horticultural practices Cultivated ginseng includes woodsgrown ginseng
- (e) Dealer means a person who buys collects or otherwise acquires ginseng roots in this state for resale or trade
- (f) Dealer license means a license issued by the director authorizing a dealer to buy collect or otherwise acquire ginseng roots for resale or export from this state
- (g) Department means the department of agriculture
- (h) Director means the director of the department of agriculture or an authorized representative of the director
- (i) Dry weight means the weight in pounds and ounces of harvested or collected ginseng root that is dried and is no longer viable
- (j) Ginseng means Panax quinquefolius L also known as Panax quinquefohum L commonly known as American ginseng either wild or cultivated and includes plants and plant parts
- (k) Ginseng certificate means a document issued by the department or other official agency authorized by the director that verifies the origin quantity by weight type and condition of ginseng offered for inspection

(l) Green weight means the weight in pounds and ounces of freshly harvested or collected ginseng root that is not dried and is still viable

(m) Grower means a person who grows cultivated ginseng

(n) Grower license means a license issued by the director authorizing a grower to sell cultivated ginseng that the grower has produced

(o) Harvest means to cut pick dig root up or gather ginseng

(p) Natural habitat means the environment where a species exists as a natural population

(q) Person means an individual sole proprietorship partnership corporation limited liability company association governmental entity or other legal entity

(r) Purchaser means a person who buys or otherwise acquires ginseng from a grower collector or other purchaser for resale or trade

(s) Sell means to sell trade or barter or to offer to sell trade or barter

(t) Wild ginseng means ginseng growing or grown in an uncultivated state or harvested from its natural habitat Wild ginseng includes ginseng that was introduced to or propagated in its natural habitat by sowing ginseng seed or transplanting ginseng plants from other areas and performing no other standard ginseng horticultural practices

(u) Woodsgrown ginseng means ginseng growing or grown in managed beds under natural shade

Sec 5 (1) The director shall establish and administer a ginseng management program to promote the production and harvest of cultivated ginseng and the legal collection of wild ginseng if allowed and to prohibit acts detrimental to the survival of the indigenous ginseng population The ginseng management program shall regulate ginseng collecting harvesting certification transportation and sale

(2) The state treasurer shall establish in the state treasury the ginseng management program fund A fee fine penalty or forfeited money from a conviction confiscation or other action taken under this act or a licensing fee or inspection fee under this act shall be paid to the state treasurer and deposited in the ginseng management program fund Money in the fund shall be used only for the administration of this act

(3) The director may promulgate rules to implement this act pursuant to the administrative procedures act of 1969 Act No 306 of the Public Acts of 1969 being sections 24 201 to 24 328 of the Michigan Compiled Laws

Sec 7 (1) The director may inspect any ginseng sold held or transported in this state A person shall not resist agents of the department who request to inspect ginseng A person shall not hinder a ginseng inspection by misrepresenting or concealing facts

(2) The director shall not certify and may seize ginseng cultivated harvested collected or otherwise acquired in violation of this act or in violation of a rule promulgated under this act Seized ginseng is forfeited to the state and may be disposed of as determined by the director The director may certify and sell seized ginseng Proceeds from the sale of seized ginseng shall be deposited into the ginseng management program fund

(3) The department shall charge an inspection fee based on an hourly rate established by the insect pest and plant disease act Act No 189 of the Public Acts of 1931 being sections 286 201 to 286 226 of the Michigan Compiled Laws or rules promulgated pursuant to Act No 189 of the Public Acts of 1931 for certification of both cultivated and wild ginseng

Sec 8 (1) A grower or collector shall obtain a ginseng certificate from the director certifying that ginseng harvested or collected in this state that is entering commerce or is being exported from this state was legally harvested or collected

(2) Until a ginseng certificate is obtained a person shall not do either of the following

(a) Export ginseng harvested or collected in this state

(b) Commingle ginseng harvested or collected in this state with ginseng originating outside this state

(3) Ginseng shall not be certified more than 1 time without written authorization from the director

(4) Ginseng harvested or collected in this state shall not be exported from this state under authority of a certificate issued by another state

Sec 9 (1) Ginseng plants or plant parts sold for propagation shall not be regarded as harvested or collected and are exempt from the certification requirement of this act

(2) Live ginseng plants or plant parts except seed for propagation shall not be transported or sold without the owner satisfying the plant certification and license requirements of the insect pest and plant disease act Act No 189 of the Public Acts of 1931 being sections 286 201 to 286 226 of the Michigan Compiled Laws

Sec 11 A grower selling cultivated ginseng shall do all of the following

(a) Provide a record of sale containing all of the following information to a purchaser

(i) Grower s name and address

(ii) Grower s license number and ginseng certificate number

(iii) Dry weight

(iv) Year harvested

(b) Certify that the ginseng was grown in this state in accordance with this act The certification shall be in the form prescribed by the director

(c) Maintain records of ginseng production

(d) Maintain records of the location and dimensions of and all management activities applied to any woodsgrown ginseng beds

Sec 13 (1) A person may only collect wild ginseng if and to the extent authorized by the director of the department of natural resources

(2) If the collection of wild ginseng is authorized a collector shall do all of the following

(a) Obtain a permit from the department of natural resources

(b) Collect only wild ginseng in its natural habitat during the season of August 15 through December 31

(c) Collect only mature wild ginseng plants with ripe berries and not less than 3 leaf stems or prongs

(d) Replant on the collection site all seeds from collected wild ginseng plants

(e) Obtain written authorization from a land manager landowner authorized agent or other person entitled to the ginseng if collecting wild ginseng from property other than the collector s property

(3) A person possessing collected wild ginseng shall maintain accurate records of all of the following

(a) Green weight

(b) Dry weight

(c) County where collected

(d) Date collected

(4) A person shall not sell collected wild ginseng unless licensed as a dealer

(5) A person shall not sell collected wild ginseng without providing a record of sale to a purchaser containing all of the following information

(a) Collector s name and address

(b) Dealer license number

(c) Ginseng certificate number

(d) Green weight

(e) Dry weight

(f) County where collected

(g) Year collected

(h) Date of sale

(5) A person selling wild ginseng shall attest in an affidavit that the wild ginseng sold was collected in this state in accordance with this act The affidavit shall be in the form prescribed by the director

Sec 15 (1) A grower shall be licensed by the department and pay a \$25 00 annual license fee A grower s license expires annually on August 14 A person shall not sell or distribute cultivated ginseng unless licensed by the department

(2) A dealer shall be licensed by the department and pay a \$100 00 annual license fee A dealer s license is nontransferable A dealer s license expires annually on August 14 A person shall not act as a dealer unless licensed by the department The licensing requirements of this section do not apply to a person purchasing dried ginseng solely for retail sale in Michigan to individuals for personal consumption

(3) A person who acts as both a grower and a dealer must be licensed as both a grower and a dealer

Sec 17 A dealer shall not do any of the following

(a) Buy or otherwise acquire uncertified ginseng without written authorization from the director

(b) Buy acquire or sell ginseng without creating and maintaining an accurate record of all of the following information

(i) Seller s or purchaser s name and address

(ii) Grower s license number dealer s license number or collector s name and address and ginseng certificate number

(iii) Green weight and dry weight of wild ginseng and cultivated ginseng compiled separately and county where the ginseng was harvested or collected

(iv) Year the ginseng was harvested or collected

(v) Date of the transaction

(c) Sell or export ginseng harvested in this state without first obtaining a ginseng certificate

Sec 19 (1) A grower or dealer shall submit all cultivated and wild ginseng in the grower s or dealer s possession for weighing annually on March 31 The director shall record separately the weight of the certified and uncertified ginseng submitted Future export certification of uncertified ginseng shall be based on these records in a draw down process until all documented stock has been certified

(2) A dealer shall document the cultivated ginseng and wild ginseng submitted for weighing as required in section 17 The cultivated ginseng and wild ginseng submitted for weighing and all documentation shall be available for inspection by the director at all reasonable hours

Sec 21 A grower collector or dealer shall not provide a purchaser with a record of sale for more ginseng than is actually sold or otherwise exchanged

Sec 23 A record required under this act shall be retained for 2 years after the ginseng documented is sold conveyed or otherwise exchanged A record shall be available for inspection by the director at all reasonable hours

Sec 27 A person shall not do any of the following

(a) Harvest collect or transport ginseng without documentation evidencing ownership or control of the property from which the ginseng was harvested or collected or written authorization from a land manager landowner authorized agent or other person entitled to the ginseng The authorization shall be in a form prescribed by the director

(b) Fail to maintain all required records

(c) Buy otherwise acquire or possess uncertified ginseng except ginseng cultivated harvested or collected on that person s own property or property under that person s direct control

(d) Transport uncertified ginseng from this state

(e) Possess ginseng originating from another state without authorization from the state of origin

(f) Violate this act or a rule promulgated under this act

(g) Knowingly provide incorrect or false information on a license application report export certificate or other document required under this act or to the director

Sec 29 (1) A person who violates this act or a rule promulgated under this act is guilty of a misdemeanor and is subject to the following penalties

(a) If the person was acting as a dealer in violation of this act for a first offense the person shall be fined not less than \$1 000 00 or more than \$5 000 00 or shall be imprisoned for not more than 90 days or both For each subsequent offense the person shall be fined not less than \$2 000 00 or more than \$10 000 00 or shall be imprisoned for not more than 90 days or both

(b) If the person was acting as a grower in violation of this act for a first offense the person shall be fined not less than \$25 00 or more than \$500 00 or shall be imprisoned for not more than 90 days or both For each subsequent offense the person shall be fined not less than \$200 00 or more than \$1 000 00 or shall be imprisoned for not more than 90 days or both

(2) In addition to other penalties provided by law the director may withhold suspend or revoke a license registration or certificate for good cause including violation of this act or violation of a rule promulgated under this act

Sec 31 (1) After notice and opportunity for hearing upon finding that a person has violated this act or a rule promulgated under this act the director may impose an administrative fine of not more than \$1 000 00 for each violation If a violation of this act or a rule promulgated under this act occurs despite the exercise of due care or does not result in significant harm to human health or the environment the director may issue a warning in lieu of an administrative fine

(2) The director shall advise the attorney general if a person fails to pay an administrative fine imposed under this section. The attorney general may bring a civil action in a court of competent jurisdiction to recover the fine.

Co Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor

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