



HOUSE BILL No. 5438

March 23 1994 Introduced by Reps Randall Gnodtke Anthony Bender and McNutt
and referred to the Committee on Agriculture and Forestry

A bill 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

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

3 Sec 3 As used in this act

4 (a) 'Buy means to purchase, trade, or barter, or to offer
5 to purchase, trade or barter

6 (b) 'Collector means a person who harvests wild ginseng

7 (c) Cultivated ginseng" means ginseng growing or grown in
8 tilled beds under artificial or natural shade and cultivated
9 according to recognized ginseng horticultural practices

10 (d) Dealer means a person who buys harvests or otherwise
11 acquires ginseng in this state for resale or trade

1 (e) Dealer license means a license issued by the director
2 authorizing a dealer to buy, harvest or otherwise acquire gin-
3 seng for resale or export from this state

4 (f) 'Department means the department of agriculture

5 (g) Director means the director of the department of agri-
6 culture or an authorized representative of the director

7 (h) Dry weight' means the weight in pounds and ounces of
8 harvested ginseng root that is dried and is no longer viable

9 (i) Ginseng means Panax quinquefolius L , also known as
10 Panax quinquefolium L , commonly known as American ginseng
11 either wild or cultivated, and includes plants, plant parts,
12 roots but not seed

13 (j) 'Ginseng certificate means a document issued by the
14 department or other official agency that verifies the origin
15 quantity by weight type and condition of ginseng offered for
16 inspection

17 (k) Green weight means the weight in pounds and ounces of
18 freshly harvested ginseng root that is not dried and is still
19 viable

20 (l) Grower means a person who grows cultivated ginseng

21 (m) Grower license means a license issued by the director
22 authorizing a grower to sell cultivated ginseng that the grower
23 has produced

24 (n) Harvest means to cut pick dig root up, gather or
25 collect ginseng

26 (o) Natural habitat means the environment where a species
27 exists as a natural population

1 (p) Person means an individual sole proprietorship,
2 partnership corporation limited liability company association
3 governmental entity, or other legal entity

4 (q) Purchaser' means a person who buys or otherwise
5 acquires ginseng from a grower, collector, or other purchaser for
6 resale or trade

7 (r) 'Sell means to sell, trade or barter or to offer to
8 sell, trade, or barter

9 (s) "Wild ginseng means ginseng growing in an uncultivated
10 state or harvested from its natural habitat Wild ginseng
11 includes ginseng that was introduced to or propagated in its nat-
12 ural habitat by sowing ginseng seed or transplanting ginseng
13 plants from other areas and performing no other standard ginseng
14 horticultural practices

15 Sec 5 (1) The director shall establish and administer a
16 ginseng management program to promote the cultivation and harvest
17 of ginseng and the harvest of wild ginseng, if allowed and to
18 prohibit acts detrimental to the survival of the indigenous gin-
19 seng population The ginseng management program shall regulate
20 ginseng harvesting certification transportation and sale

21 (2) The state treasurer shall establish in the state trea-
22 sury the ginseng management program fund A fee fine penalty,
23 or forfeited money from a conviction, confiscation, or other
24 action taken under this act, or a licensing fee or inspection fee
25 under this act shall be paid to the state treasurer and depos-
26 ited in the ginseng management program fund Money in the fund
27 shall be used only for the administration of this act

1 (3) The director may promulgate rules to implement this act
2 pursuant to the administrative procedures act of 1969 Act
3 No 306 of the Public Acts of 1969 being sections 24 201 to
4 24 328 of the Michigan Compiled Laws

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

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

17 (3) The department shall charge an inspection fee based on
18 an hourly rate established by the insect pest and plant disease
19 act Act No 189 of the Public Acts of 1931 being sections
20 286 201 to 286 226 of the Michigan Compiled Laws or rules
21 promulgated pursuant to Act No 189 of the Public Acts of 1931,
22 for certification of both cultivated and wild ginseng

23 Sec 8 (1) Upon harvest, a grower or collector shall
24 obtain a ginseng certificate from the director certifying that
25 ginseng cultivated or harvested in this state that is entering
26 commerce or is being exported from this state was legally
27 cultivated or harvested

1 (2) Until a certificate of origin is obtained from the
2 director a person shall not do either of the following

3 (a) Export ginseng harvested in this state

4 (b) Commingle ginseng grown or harvested in this state with
5 ginseng originating outside this state

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

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

11 Sec 9 (1) Ginseng plants sold for propagation shall not
12 be regarded as harvested and are exempt from the certification
13 requirement of this act

14 (2) Live ginseng plants for propagation shall not be trans-
15 ported or sold without the owner satisfying the plant certifica-
16 tion and license requirements of the insect pest and plant dis-
17 ease act Act No 189 of the Public Acts of 1931 being sections
18 286 201 to 286 226 of the Michigan Compiled Laws

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

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

23 (i) Grower s name and address

24 (ii) Grower s license number and ginseng certificate
25 number

26 (iii) Green weight

1 (iv) Dry weight

2 (v) Year harvested

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

6 (c) Maintain records of ginseng production

7 Sec 13 (1) A person may only harvest wild ginseng if, and
8 to the extent, authorized by the director of the department of
9 natural resources under the endangered species act of 1974, Act
10 No 203 of the Public Acts of 1974 being sections 299 221 to
11 299 230 of the Michigan Compiled Laws

12 (2) If the harvest of wild ginseng is authorized, a collec-
13 tor shall do all of the following

14 (a) Obtain a permit from the department of natural resources
15 pursuant to section 6 of Act No 203 of the Public Acts of 1974
16 being section 299 226 of the Michigan Compiled Laws

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

19 (c) Harvest only mature wild ginseng plants with ripe ber-
20 ries and not less than 3-leaf stems or prongs

21 (d) Replant on the harvest site all seeds from harvested
22 wild ginseng plants

23 (e) Obtain written authorization from a land manager, land-
24 owner authorized agent, or other person entitled to the ginseng
25 if harvesting wild ginseng from property other than the
26 collector s property

1 (3) A collector possessing harvested wild ginseng shall
2 maintain accurate records of all of the following

3 (a) Green weight

4 (b) Dry weight

5 (c) County where harvested

6 (d) Date harvested

7 (4) A collector shall not sell harvested wild ginseng with-
8 out providing a record of sale to a purchaser containing all of
9 the following information

10 (a) Collector s name and address

11 (b) Green weight

12 (c) Dry weight

13 (d) County where harvested

14 (e) Year harvested

15 (f) Date of sale

16 (5) A collector selling wild ginseng shall certify that the
17 wild ginseng sold was harvested in this state in accordance with
18 this act The certification shall be in the form prescribed by
19 the director

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

24 (2) A dealer shall be licensed by the department and pay a
25 \$100 00 annual license fee A dealer s license is
26 nontransferable A dealer s license expires annually on August
27 14 A person shall not act as a dealer unless licensed by the

1 department The licensing requirements of this section do not
 2 apply to a person purchasing dried ginseng solely for retail sale
 3 in Michigan to individuals for personal consumption

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

6 Sec 17 A dealer shall not do any of the following

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

9 (b) Buy, acquire, or sell ginseng without creating and main-
 10 taining an accurate record of all of the following information

11 (i) Seller's or purchaser s name and address

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

14 (iii) Green weight and dry weight of wild ginseng and culti-
 15 vated ginseng, compiled separately and county where the ginseng
 16 was harvested

17 (iv) Year the ginseng was harvested

18 (v) Date of the transaction

19 (c) Sell or export ginseng harvested in this state without
 20 first obtaining a certificate of origin from the director

21 Sec 19 (1) A dealer shall submit all cultivated and wild
 22 ginseng in the dealer s possession for weighing annually on

23 March 31 The director shall record separately the weight of the
 24 cultivated and wild ginseng submitted Future export certifica-
 25 tion of uncertified ginseng shall be based on these records in a
 26 draw-down process until all documented stock has been certified

1 (2) A dealer shall document the cultivated ginseng and wild
2 ginseng submitted for weighing as required in section 17 The
3 cultivated ginseng and wild ginseng submitted for weighing and
4 all documentation shall be available for inspection by the direc-
5 tor at all reasonable hours

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

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

13 Sec 27 A person shall not do any of the following

14 (a) Harvest or transport ginseng without documentation evi-
15 dencing ownership or control of the property from which the gin-
16 seng was harvested or written authorization from a land manager
17 landowner authorized agent or other person entitled to the
18 ginseng The authorization shall be in a form prescribed by the
19 director

20 (b) Buy otherwise acquire or possess uncertified ginseng,
21 except ginseng cultivated or harvested on that person s own prop-
22 erty or property under that person s direct control

23 (c) Transport uncertified ginseng from this state

24 (d) Possess ginseng originating from another state without
25 authorization from the state of origin

26 (e) Violate this act or a rule promulgated under this act

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

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

7 (a) If the person was acting as a dealer in violation of
8 this act, for a first offense, the person shall be fined not less
9 than \$1,000 00 or more than \$5,000 00, or shall be imprisoned for
10 not more than 90 days or both For each subsequent offense the
11 person shall be fined not less than \$2 000 00 or more than
12 \$10 000 00, or shall be imprisoned for not more than 90 days or
13 both

14 (b) If the person was acting as a grower in violation of
15 this act, for a first offense, the person shall be fined not less
16 than \$25 00 or more than \$500 00, or shall be imprisoned for not
17 more than 90 days or both For each subsequent offense the
18 person shall be fined not less than \$200 00 or more than
19 \$1 000 00 or shall be imprisoned for not more than 90 days, or
20 both

21 (2) In addition to other penalties provided by law the
22 director may withhold suspend or revoke a license registra-
23 tion or certificate for good cause, including violation of this
24 act or violation of a rule promulgated under this act

25 Sec 31 (1) After notice and opportunity for hearing upon
26 finding that a person has violated this act or a rule promulgated
27 under this act the director may impose an administrative fine of

1 not more than \$1,000 00 for each violation If a violation of
2 this act or a rule promulgated under this act occurs despite the
3 exercise of due care or does not result in significant harm to
4 human health or the environment, the director may issue a warning
5 in lieu of an administrative fine

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