

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 758

Short Title: Plant Protection Act Amended.

(Public)

Sponsors: Representative Brown.

Referred to: Basic Resources.

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PLANT PROTECTION AND CONSERVATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-202.15 is amended by adding a new subdivision to read:

"(13) To stop the sale or to seize any endangered, threatened or special concern plant species, or part thereof possessed, transported or moved within this State or brought into this State from any place outside the State if such is found by the Board or its duly authorized agents to be in violation of this Article or the rules and regulations promulgated under this Article. Such plants shall be moved or disposed of at the direction of the Board or its agents or by order."

Sec. 2. G.S. 106-202.19 reads as rewritten:

"§ 106-202.19. Unlawful acts; penalties; enforcement.

(a) It is unlawful:

(1) To uproot, dig, take or otherwise disturb or remove for any purpose from the lands of another, any plant on a protected plant list without a written permit from the owner which is dated and valid for no more than 180 days and which indicates the species or higher taxon of plants for which permission is granted; except that the incidental disturbance of protected plants during agricultural, forestry or development operations is not illegal so long as the plants are not collected for sale or commercial use;

(2) To sell, barter, trade, exchange, export, offer for sale, barter, trade, exchange or export or give away for any purpose including advertising or other promotional purpose any plant on a protected plant list, except

- 1 as authorized according to the rules and regulations of the Board;
2 including those promulgated pursuant to G.S. 106-202.15(1);
- 3 (3) ~~To violate any rule perform any act specifically prohibited by the rules~~
4 ~~and regulations of the Board promulgated under this Article; pursuant~~
5 ~~to its authority under G.S. 106-202.15.~~
- 6 (4) To dig ginseng on another person's land, except for the purpose of
7 replanting, between the first day of April and the first day of
8 September;
- 9 (5) To buy ginseng outside of a buying season as provided by the Board
10 without obtaining the required documents from the person selling the
11 ginseng;
- 12 (6) To buy ginseng without being licensed as a ginseng dealer;
- 13 (7) To fail to keep records required hereunder, to refuse to make records
14 available for inspection by the Board or its agents, or to use forms
15 other than those provided for the current year or harvest season by the
16 Department of Agriculture;
- 17 (8) To provide false information on any record or form required by this
18 Article;
- 19 (9) To make false statements or provide false information in connection
20 with any investigation conducted under this Article;
- 21 (10) To possess any protected plant, or part thereof, which was obtained in
22 violation of this Article or any rule adopted hereunder; or
- 23 (11) To violate a stop sale order issued by the Board or its agents.

24 ~~The illegal movement or distribution of each plant, pursuant to this subsection shall~~
25 ~~constitute a separate violation.~~

26 ~~Each person convicted of violating the provisions of this Article, shall be fined not~~
27 ~~less than one hundred dollars (\$100.00), upon the first conviction and not less than five~~
28 ~~hundred dollars (\$500.00) upon a subsequent conviction.~~

29 (a1) Any person convicted of violating this Article, or any rule of the Board
30 adopted pursuant to this Article shall be guilty of a misdemeanor, and for a first
31 violation shall be fined not less than one hundred dollars (\$100.00) nor more than five
32 hundred dollars (\$500.00); and upon a subsequent conviction shall be fined not less than
33 five hundred dollars (\$500.00) and not more than one thousand dollars (\$1000). Each
34 illegal movement or distribution of a protected plant shall constitute a separate
35 violation. In addition, if any person continues to violate or further violates any
36 provision of this Article after written notice from the Board, the court may determine
37 that each day during which the violation contained or is repeated constitutes a separate
38 violation subject to the foregoing penalties.

39 (a2) A civil penalty of not more than two thousand dollars (\$2000) may be
40 assessed by the Board against any person guilty of violating this Article.

41 (b) The Commissioner or any employee of the Department of Agriculture designated
42 by the Commissioner to enforce the provisions of this Article, may enter any place
43 within the State at all reasonable times where plant materials are being grown,
44 transported or offered for sale and require the presentation for inspection of all pertinent

1 papers and records relative to the provisions of this Article, after giving notice in
2 writing to the owner or custodian of the premises to be entered. If he refuses to consent
3 to the entry, the Commissioner may apply to any district court judge and the judge may
4 order, without notice, that the owner or custodian of the place permit the Commissioner
5 to enter the place for the purposes herein stated and failure by any person to obey the
6 order may be punished as for contempt.

7 (c) The Commissioner of Agriculture is authorized to apply to the superior court
8 for, and the court shall have jurisdiction upon hearing and, for cause shown, to grant a
9 temporary or permanent injunction restraining any person from violating any provision
10 of G.S. 106-202.19(a), regardless of whether there exists an adequate remedy at law.”

11 Sec. 3. Article 19B of Chapter 106 of the General Statutes is amended by
12 adding the following sections to read:

13 **“§ 106-202.20. Forfeiture of illegally possessed plants; disposition of plants.**

14 Upon conviction of any defendant for a violation of G.S. 106-202.19, the court, in its
15 discretion, may order the defendant to forfeit any plant or plant parts which he possesses
16 in violation of G.S. 106-202.19. The court shall direct disposition of any forfeited plant
17 or plant part by destruction or sale. The proceeds from such a sale shall be paid to the
18 North Carolina Department of Agriculture for use in the enforcement of this Article.

19 **“§ 106-202.21. Ginseng dealer license.**

20 (a) No person shall act in the capacity of a ginseng dealer, or shall engage, or
21 offer to engage in the business of, advertise as, or assume to act as a ginseng dealer
22 unless that person is licensed annually as provided in this Article.

23 (b) Applications for a ginseng dealer license shall be on a form and shall contain
24 information as prescribed by the Board. All licenses issued under this section shall
25 expire on June 30 of the licensing year for which they are issued.

26 (c) A ginseng dealer license may be renewed annually upon application to the
27 Board.

28 (d) A ginseng dealer shall notify the Board of any change of address or business
29 location within 30 days.

30 (e) The Board shall issue to each applicant who satisfies the requirements of this
31 Article a license which entitles the applicant to conduct the business described in the
32 application during the harvest season for which the license is issued, unless the license
33 is sooner revoked or suspended.

34 **“§ 106-202.22. Denial, revocation or suspension of license or permit.**

35 (a) The Board may deny, suspend, revoke, or modify any license or permit issued
36 under this Article if it finds that the applicant, licensee, or permit holder has violated
37 this Article.

38 (b) Suspension of any license or permit under this Article shall be for not less
39 than one year. Any licensee or permit holder whose license or permit has been revoked
40 shall not be eligible to reapply until two years after the final decision of the Board or
41 two years after his license or permit is surrendered pursuant to such revocation,
42 whichever is earlier. The expiration or voluntary surrender of a license or permit shall
43 not deprive the Board of jurisdiction to suspend, revoke or modify such license or
44 permit. A person whose license or permit has been suspended or revoked shall not

1 engage in business as an employee, partner, or associate of another licensee or permit
2 holder during the period of such revocation or suspension.

3 (c) If a license or permit is suspended or revoked, the licensee or permit holder
4 shall, within five days of such suspension or revocation, surrender such license to the
5 Commissioner or his authorized representative."

6 Sec. 4. G.S. 14-392 and G.S. 14-393 are repealed.

7 Sec. 5. This act shall become effective July 1, 1989. Prosecutions for
8 offenses occurring before the effective date of this act are not abated or affected by this
9 act, and the statutes that would be applicable but for this act remain applicable to those
10 prosecutions.