

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 758

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Environment & Natural Resources Senate Committee Substitute Adopted 6/13/89

Short Title: Plant Protection Act Amended.

(Public)

Sponsors:

Referred to:

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 of 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 agent to be in violation of this Article or rules adopted pursuant to this Article. Such plants shall be moved or disposed of at the direction of the Board or its agent or by court 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

- 1 operations is not illegal so long as the plants are not collected for sale
2 or commercial use;
- 3 (2) To sell, barter, trade, exchange, export, offer for sale, barter, trade,
4 exchange or export or give away for any purpose including advertising
5 or other promotional purpose any plant on a protected plant list, except
6 as authorized according to the rules and regulations of the Board;
7 ~~including those promulgated pursuant to G.S. 106-202.15(1);~~
- 8 (3) ~~To violate any rule perform any act specifically prohibited by the rules
9 and regulations of the Board promulgated under this Article; pursuant
10 to its authority under G.S. 106-202.15.~~
- 11 (4) To dig ginseng on another person's land, except for the purpose of
12 replanting, between the first day of April and the first day of
13 September;
- 14 (5) To buy ginseng outside of a buying season as provided by the Board
15 without obtaining the required documents from the person selling the
16 ginseng;
- 17 (6) To buy ginseng for the purpose of resale or trade without being
18 holding a currently valid permit as a ginseng dealer;
- 19 (7) To fail to keep records as required under this Article, to refuse to make
20 records available for inspection by the Board or its agent, or to use
21 forms other than those provided for the current year or harvest season
22 by the Department of Agriculture;
- 23 (8) To provide false information on any record or form required under this
24 Article;
- 25 (9) To make false statements or provide false information in connection
26 with any investigation conducted under this Article;
- 27 (10) To possess any protected plant, or part thereof, which was obtained in
28 violation of this Article or any rule adopted hereunder; or
- 29 (11) To violate a stop sale order issued by the Board or its agent.

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

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

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

1 (a2) A civil penalty of not more than two thousand dollars (\$2000) may be
2 assessed by the Board against any person guilty of violating this Article a second or
3 subsequent time.

4 (b) The Commissioner or any employee of the Department of Agriculture designated
5 by the Commissioner to enforce the provisions of this Article, may enter any place
6 within the State at all reasonable times where plant materials are being grown,
7 transported or offered for sale and require the presentation for inspection of all pertinent
8 papers and records relative to the provisions of this Article, after giving notice in
9 writing to the owner or custodian of the premises to be entered. If he refuses to consent
10 to the entry, the Commissioner may apply to any district court judge and the judge may
11 order, without notice, that the owner or custodian of the place permit the Commissioner
12 to enter the place for the purposes herein stated and failure by any person to obey the
13 order may be punished as for contempt.

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

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

20 **“§ 106-202.20. Forfeiture of illegally possessed plants; disposition of plants.**

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

26 **“§ 106-202.21. Ginseng dealer permits.**

27 (a) No person shall act in the capacity of a ginseng dealer, or shall engage, or
28 offer to engage in the business of, advertise as, or assume to act as a ginseng dealer
29 unless that person holds a currently valid permit as provided in this Article.

30 (b) Applications for a ginseng dealer permit shall be on a form and shall contain
31 information as prescribed by the Board. All permits issued under this section shall
32 expire on 30 June of the fiscal year for which they are issued.

33 (c) A ginseng dealer permit may be renewed annually upon application to the
34 Board.

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

37 (e) The Board shall issue to each applicant who satisfies the requirements of this
38 Article a permit which entitles the applicant to conduct the business described in the
39 application during the harvest season for which the permit is issued, unless the permit is
40 suspended or revoked.

41 **“§ 106-202.22. Denial, suspension, or revocation of permit.**

42 (a) The Board may deny, suspend, revoke, or modify any permit issued under
43 this Article if it finds that the applicant or permit holder has violated this Article or rules
44 adopted pursuant to this Article.

1 **(b) Suspension of any permit under this Article shall be for not less than one**
2 **year. Any permit holder whose permit has been revoked shall not be eligible to reapply**
3 **until two years after the final decision of the Board or two years after his permit is**
4 **surrendered pursuant to such revocation, whichever is earlier. The expiration or**
5 **voluntary surrender of a permit shall not deprive the Board of jurisdiction to suspend,**
6 **revoke or modify such permit. A person whose permit has been suspended or revoked**
7 **shall not engage in business as an employee, partner, or associate of another permit**
8 **holder during the period of such revocation or suspension.**

9 **(c) If a permit is suspended or revoked, the permit holder shall, within five days**
10 **of such suspension or revocation, surrender such permit to the Commissioner or his**
11 **authorized representative."**

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

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