

Article 19B.

Plant Protection and Conservation Act.

**§ 106-202.12. Definitions.**

As used in this Article, unless the context requires otherwise:

- (1) "Board" means the North Carolina Plant Conservation Board as provided in this Article.
- (2) "Commissioner" means the Commissioner of Agriculture.
- (3) "Conserve" and "conservation" mean to use, and the use of, all methods and procedures for the purposes of increasing the number of individuals of resident species of plants up to adequate levels to assure their continuity in their ecosystems. These methods and procedures include all activities associated with scientific resource conservation such as research, census, law enforcement, habitat protection, acquisition and maintenance, propagation, and transplantation into unoccupied parts of historic range. With respect to endangered and threatened species, the terms mean to use, and the use of, methods and procedures to bring any endangered or threatened species to the point at which the measures provided for the species are no longer necessary.
- (4) "Endangered species" means any species or higher taxon of plant whose continued existence as a viable component of the State's flora is determined to be in jeopardy by the Board; also, any species of plant determined to be an "endangered species" pursuant to the Endangered Species Act.
- (5) "Endangered Species Act" means the Endangered Species Act of 1973, Public Law 93-205 (87 Stat. 884), as it may be subsequently amended.
- (6) "Exotic species" means a species or higher taxon of plant not native or naturalized in North Carolina but appearing in the Federal Endangered and Threatened Species List or in the appendices to the International Treaty on Endangered and Threatened Species.
- (7) "Plant" means any member of the plant kingdom, including seeds, roots and other parts or their propagules.
- (8) "Protected plant" means a species or higher taxon of plant adopted by the Board to protect, conserve, and/or enhance the plant species and includes those the Board has designated as endangered, threatened, or of special concern.
- (9) "Resident plant or resident species" means a native species or higher taxon of plant growing in North Carolina.
- (10) "Scientific committee" means the North Carolina Plant Conservation Scientific Committee.
- (11) "Special concern species" means any species of plant in North Carolina which requires monitoring but which may be collected and sold under regulations adopted under the provisions of this Article.
- (12) "Threatened species" means any resident species of plant which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, or one that is designated as threatened by the Federal Fish and Wildlife Service. (1979, c. 964, s. 1.)

**§ 106-202.13. Declaration of policy.**

The General Assembly finds that the recreational needs of the people, the interests of science, and the economy of the State require that threatened and endangered species of plants and species of plants of special concern be protected and conserved, that their numbers should be enhanced and that propagative techniques be developed for them; however, nothing in this Article shall be construed to limit the rights of a property owner, without his consent, in the management of his lands for agriculture, forestry, development or any other lawful purpose. (1979, c. 964, s. 1.)

**§ 106-202.14. Creation of Board; membership; terms; chairman; quorum; board actions; compensation.**

(a) The North Carolina Plant Conservation Board is created within the Department of Agriculture and Consumer Services.

(b) The Board shall consist of seven members who are residents of North Carolina, one of whom represents each of the following:

- (1) The North Carolina Botanical Garden of The University of North Carolina at Chapel Hill;
- (2) The botanical, scientific community in North Carolina;
- (3) The North Carolina Forest Service of the Department of Agriculture and Consumer Services;
- (4) A North Carolina citizens conservation organization;
- (5) The commercial plant production industry in North Carolina;
- (6) The Department of Agriculture and Consumer Services;
- (7) The North Carolina public at large.

The Governor shall appoint the first four members enumerated above; the Commissioner shall appoint the remaining three members.

(c) Initial appointments to the Board shall be made by October 1, 1979. Of the terms of initial appointees, the representatives of the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill, the commercial plant production industry in North Carolina, and a North Carolina citizens conservation organization shall serve two-year terms; all other members shall serve four-year terms. All subsequent terms shall be for four-year terms.

(d) All members shall hold their offices until their successors are appointed and qualified. Any vacancy occurring in the membership of the Board prior to the expiration of the term shall be filled for the remainder of the unexpired term. The Commissioner may at any time remove any member from the Board for cause. Each appointment to fill a vacancy in the membership of the Board shall be of a person having the proper credentials for that vacancy and appointed by the proper appointing agency.

(e) The Board shall select its chairman from its own membership to serve for a term of two years. The chairman shall have a full vote. Any vacancy occurring in the chairmanship shall be filled by the Board for the remainder of the term. The Board may select other officers as it deems necessary.

(f) Any action of the Board shall require at least four concurring votes.

(g) Members of the Board who are not State employees shall receive per diem, subsistence and travel allowances authorized by G.S. 138-5; members who are State employees shall receive the subsistence and travel allowances authorized by G.S. 138-6; and members who are also members of the General Assembly shall receive subsistence and travel allowances authorized by G.S. 120-3.1. (1979, c. 964, s. 1; 1989, c. 727, s. 218(45); 1997-261, ss. 37, 38; 1997-443, s. 11A.119(a); 2011-145, s. 13.25(qq); 2013-155, s. 9.)

**§ 106-202.15. Powers and duties of the Board.**

The Board shall have all of the following powers and duties:

- (1) To adopt and maintain a list of protected plant species for North Carolina, identifying each entry by the common name and scientific name, along with its status as endangered, threatened, or of special concern, as provided under G.S. 106-202.16.
- (2) To reconsider and revise the lists from time to time in response to public proposals and as the Board deems necessary.
- (3) To conserve and to regulate the collection and shipment of those plant species or higher taxa that are of such similarity to endangered and threatened species that they cannot be easily or readily distinguished from an endangered or threatened species.
- (4) To regulate within the State any exotic species, in the same manner as a resident species if the exotic species is on the Federal Endangered and Threatened Species List or it is listed in the Appendices to the International Treaty to Conserve Endangered and Threatened Species.
- (5) To determine that certain plant species growing in North Carolina, whether or not they are on the endangered or threatened species list, are of special concern and to limit, regulate or forbid sale or collection of these plants.
- (6) To conduct investigations to determine whether a plant should be on the protected plant lists and the requirements for survival of resident species of plants.
- (7) To adopt regulations to protect, conserve and enhance resident and exotic species of plants on the lists, or to otherwise affect the intent of this Article.
- (8) To develop, establish and coordinate conservation programs for endangered species and threatened species of plants, consistent with the policies of the Endangered Species Act, including the acquisition of rights to land or aquatic habitats.
- (9) To enter into and administer cooperative agreements through the Commissioner of Agriculture, in concert with the North Carolina Botanical Garden and other agencies, with the U.S. Department of Interior or other federal, State or private organizations concerning endangered and threatened species of plants and their conservation and management.
- (10) To cooperate or enter into formal agreements with any agency of this State or of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article.
- (11) Through the Commissioner, to receive funds, donations, grants or other moneys, issue grants, enter contracts, employ personnel and purchase supplies and materials necessary to fulfill its duties.
- (12) To adopt rules under which the Department of Agriculture and Consumer Services may issue permits to licensed nurserymen, commercial growers, scientific supply houses and botanical gardens for the sale or distribution of plants on the protected list provided that the plants are nursery propagated or grown horticulturally.

- (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.
- (14) To establish fees for permits authorized in this Article. (1979, c. 964, s. 1; 1989, c. 508, s. 1; 1997-261, s. 39; 2007-456, s. 1; 2019-204, s. 8(a).)

**§ 106-202.16. Criteria and procedures for placing plants on protected plant lists.**

(a) All native or resident plants which are on the current federal lists of endangered or threatened plants pursuant to the Endangered Species Act have the same status on the North Carolina Protected Plants lists.

(b) The Board, the Scientific Committee, or any resident of North Carolina may propose to the Department of Agriculture and Consumer Services that a plant be added to or removed from a protected plant list.

(c) If the Board, with the advice of the Scientific Committee, finds that there is any substance to the proposal, it shall publish notice of the proposal in a Department of Agriculture and Consumer Services news release.

(d) The Board shall collect relevant scientific and economic data, concerning any substantial proposal, necessary to determine:

- (1) Whether or not any other State or federal agency or private entity is taking steps to protect the plant under consideration;
- (2) The present or threatened destruction, modification or curtailment of its habitat;
- (3) Over-utilization for commercial, scientific, educational or recreational purposes;
- (4) Critical depletion from disease or predation;
- (5) The inadequacy of existing regulatory mechanisms; or
- (6) Other natural or man-made factors affecting its continued existence in North Carolina.

If the Board, with the advice of the Scientific Committee, finds that the plant should be added to or removed from a protected plant list the Board shall instigate rule-making procedures to add or remove the plant from the list.

(e), (f) Repealed by Session Laws 1987, c. 827, s. 31. (1979, c. 964, s. 1; 1987, c. 827, s. 31; 1997-261, s. 109.)

**§ 106-202.17. Creation of committee; membership; terms; chairman; meetings; committee action; quorum; compensation.**

(a) The North Carolina Plant Conservation Scientific Committee is created within the Department of Agriculture and Consumer Services.

(b) The Scientific Committee shall consist of the Directors of The University of North Carolina at Chapel Hill Herbarium, the North Carolina State University Herbarium, the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill, the North Carolina State Museum of Natural Sciences of the Department of Natural and Cultural Resources, and the North Carolina Natural Heritage Program of the Department of Natural and Cultural Resources or their designees, a representative of the North Carolina Association of Nurserymen, Inc., appointed

by the Commissioner, and a representative of a conservation organization, appointed by the Commissioner. Members shall serve for three-year terms and may succeed themselves.

(c) The Board shall select a chairman of the Scientific Committee from the Scientific Committee's membership to serve for three years.

(d) The Scientific Committee may hold its meetings at the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill.

(e) Any action of the Scientific Committee shall require at least four concurring votes.

(f) Members of the Scientific Committee who are not State employees may receive per diem, subsistence and travel allowances authorized by G.S. 138-5 if they so request; members who are State employees may receive the subsistence and travel allowances authorized by G.S. 138-6 if they so request; and members who are also members of the General Assembly may receive subsistence and travel allowances authorized by G.S. 120-3.1 if they so request. (1979, c. 964, s. 1; 1989, c. 727, s. 218(46); 1993, c. 561, s. 116(i); 1997-261, s. 109; 1997-443, s. 11A.119(a); 2007-456, s. 2; 2015-241, ss. 14.30(l), (w).)

#### **§ 106-202.18. Powers and duties of the Scientific Committee.**

The Scientific Committee shall have all of the following powers and duties:

- (1) To gather and provide information and data and advise the Board with respect to all aspects of the biology and ecology of endangered and threatened plant species.
- (2) To develop and present to the Board management and conservation practices for preserving endangered or threatened plant species.
- (3) To recommend habitat areas for acquisition to the extent that funds are available or expected.
- (4) To investigate and make recommendations to the Board as to the status of endangered, threatened plant species, or species of special concern.
- (5) To make recommendations to the Board concerning regulation of the collection and shipment of endangered or threatened plant species within North Carolina.
- (6) To review and comment on environmental impact statements prepared by State agencies on projects that may affect protected plants; and
- (7) To advise the Board on matters submitted to the Scientific Committee by the Board or the Commissioner which involve technical questions and the development of pertinent rules and regulations, and make any recommendations as deemed by the Scientific Committee to be worthy of the Board's consideration. (1979, c. 964, s. 1; 2007-456, s. 3.)

#### **§ 106-202.19. Unlawful acts; penalties; enforcement.**

(a) Unless the conduct is covered under some other provision of law providing greater punishment, it is unlawful to engage in any of the following conduct:

- (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 as authorized according to the rules and regulations of the Board.
- (3) To violate any rule of the Board promulgated under this Article.
- (4) Repealed by Session Laws 2012-200, s. 18, effective October 1, 2012.
- (5) To buy ginseng outside of a buying season as provided by the Board without obtaining the required documents from the person selling the ginseng.
- (6) To buy ginseng for the purpose of resale or trade without holding a currently valid permit as a ginseng dealer.
- (6a) To uproot, dig, take, or otherwise disturb or remove for any purpose from another person's land ginseng, galax, or Venus flytrap without a written permit from the owner that is dated and valid for no more than 180 days. A person in lawful possession of the land who has a recorded lease which allows for the disturbance or removal of any vegetation on the land is not subject to this subdivision.
- (6b) To buy galax outside of a buying season as provided by the Board without obtaining the required documents from the person selling the galax.
- (6c) To buy Venus flytrap outside of a buying season as provided by the Board without obtaining the required documents from the person selling the Venus flytrap.
- (6d) To buy more than five pounds of galax for the purpose of resale or trade without a copy of the landowner's written permission and confirmation of the collection date.
- (6e) To buy more than 50 Venus flytrap plants for the purpose of resale or trade unless fully compliant with applicable regulations.
- (7) To fail to keep records as required under this Article, to refuse to make records available for inspection by the Board or its agent, or to use forms other than those provided for the current year or harvest season by the Department of Agriculture and Consumer Services.
- (8) To provide false information on any record or form required under this Article.
- (9) To make false statements or provide false information in connection with any investigation conducted under this Article.
- (10) To possess any protected plant, or part thereof, which was obtained in violation of this Article or any rule adopted under this Article.
- (11) To violate a stop sale order issued by the Board or its agent.

(a1) Any person convicted of violating this Article, or any rule of the Board adopted pursuant to this Article shall be guilty of a Class 2 misdemeanor. Each illegal movement or distribution of a protected plant shall constitute a separate violation. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(a2) A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person guilty of violating this Article a second or subsequent time. The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

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

(c) The Commissioner of Agriculture is authorized to apply to the superior court for, and the court shall have jurisdiction upon hearing and, for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of G.S. 106-202.19(a), regardless of whether there exists an adequate remedy at law. (1979, c. 964, s. 1; 1989, c. 508, s. 2; 1993, c. 539, s. 749; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, ss. 40, 41; 1998-215, s. 9; 2001-487, s. 43(b); 2007-456, ss. 4, 5; 2012-200, s. 18.)

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

Upon conviction of any defendant for a violation of G.S. 106-202.19, the court, in its discretion, may order the defendant to forfeit any plant or plant parts which he possesses in violation of G.S. 106-202.19. The court shall direct disposition of any forfeited plant or plant part by destruction or sale. The clear proceeds of forfeitures and sales pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1989, c. 508, s. 3; 1997-261, s. 109; 1998-215, s. 10.)

#### **§ 106-202.21. Ginseng dealer permits.**

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

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

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

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

(e) The Board shall issue to each applicant who satisfies the requirements of this Article a permit which entitles the applicant to conduct the business described in the application during the harvest season for which the permit is issued, unless the permit is suspended or revoked. (1989, c. 508, s. 3.)

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

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

(b) Suspension of any permit under this Article shall be for not less than one year. Any permit holder whose permit has been revoked shall not be eligible to reapply until two years after the final decision of the Board or two years after his permit is surrendered pursuant to such

revocation, whichever is earlier. The expiration or voluntary surrender of a permit shall not deprive the Board of jurisdiction to suspend, revoke or modify such permit. A person whose permit has been suspended or revoked shall not engage in business as an employee, partner, or associate of another permit holder during the period of such revocation or suspension.

(c) If a permit is suspended or revoked, the permit holder shall, within five days of such suspension or revocation, surrender such permit to the Commissioner or his authorized representative. (1989, c. 508, s. 3.)