

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 758
Second Edition Engrossed 5/3/89

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 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 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

1 or other promotional purpose any plant on a protected plant list, except
2 as authorized according to the rules and regulations of the Board;
3 ~~including those promulgated pursuant to G.S. 106-202.15(1);~~

4 (3) ~~To violate any rule perform any act specifically prohibited by the rules
5 and regulations of the Board promulgated under this Article; pursuant
6 to its authority under G.S. 106-202.15.~~

7 (4) To dig ginseng on another person's land, except for the purpose of
8 replanting, between the first day of April and the first day of
9 September;

10 (5) To buy ginseng outside of a buying season as provided by the Board
11 without obtaining the required documents from the person selling the
12 ginseng;

13 (6) To buy ginseng for the purpose of resale or trade without being
14 licensed as a ginseng dealer;

15 (7) To fail to keep records required hereunder, to refuse to make records
16 available for inspection by the Board or its agents, or to use forms
17 other than those provided for the current year or harvest season by the
18 Department of Agriculture;

19 (8) To provide false information on any record or form required by this
20 Article;

21 (9) To make false statements or provide false information in connection
22 with any investigation conducted under this Article;

23 (10) To possess any protected plant, or part thereof, which was obtained in
24 violation of this Article or any rule adopted hereunder; or

25 (11) To violate a stop sale order issued by the Board or its agents.

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

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

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

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

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

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

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

17 **“§ 106-202.20. Forfeiture of illegally possessed plants; disposition of plants.**

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

23 **“§ 106-202.21. Ginseng dealer license.**

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

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

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

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

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

38 **“§ 106-202.22. Denial, revocation or suspension of license or permit.**

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

42 (b) Suspension of any license or permit under this Article shall be for not less
43 than one year. Any licensee or permit holder whose license or permit has been revoked
44 shall not be eligible to reapply until two years after the final decision of the Board or

1 two years after his license or permit is surrendered pursuant to such revocation,
2 whichever is earlier. The expiration or voluntary surrender of a license or permit shall
3 not deprive the Board of jurisdiction to suspend, revoke or modify such license or
4 permit. A person whose license or permit has been suspended or revoked shall not
5 engage in business as an employee, partner, or associate of another licensee or permit
6 holder during the period of such revocation or suspension.

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

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

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