

CHAPTER 15

(HB 362)

AN ACT relating to ginseng.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 246.650 is amended to read as follows:

As used in KRS 246.660, unless the context clearly requires otherwise:

- (1) "Harvest" means to take any part of the ~~the wild~~ ginseng plant while the plant is living; ~~and~~ ~~the~~
- (2) "~~Wild~~ Ginseng" means any *part of the American ginseng plant known as Panax quinquefolius* ~~ginseng~~ plant growing as nature caused the plant to grow without any assistance from man, but includes any plant grown from seeds of a wild plant replanted within fifty (50) feet of the harvesting point using no implement other than fingers for planting.
- ~~(3) "Cultivated ginseng" means any ginseng plant grown under natural or artificial shade and cultivated according to varying standards of cultivation procedures.~~

➔Section 2. KRS 246.660 is amended to read as follows:

- (1) (a) The department shall administer a program for ~~wild American~~ ginseng in Kentucky which provides a framework, including a limited harvesting season, in which ~~wild American~~ ginseng shall be eligible for exportation in compliance with federal requirements.
- (b) *Information relating to the purchase or sale of ginseng that is furnished to or acquired by the department shall constitute proprietary information and not be subject to public disclosure, except to the extent the department deems necessary in any administrative or judicial proceeding involving the administration or enforcement of its administrative regulations.*
- (2) (a) The department shall promulgate *administrative* regulations to carry out this program and ~~may cooperate with and~~ enter into agreements with any other agency of this state, any other state, or the federal government to carry out this program. ~~Any regulation promulgated under this section shall be no more restrictive than minimum federal requirements.~~
- (b) *The department shall establish licensing requirements for dealers of ginseng.*
- (c) *The department shall promulgate administrative regulations relating to the ginseng program that establish:*
 1. *A comprehensive set of administrative violations and civil penalties each not to exceed one thousand dollars (\$1,000); and*
 2. *The procedure for the suspension or revocation of any license or certificate issued by the department.*

➔SECTION 3. A NEW SECTION OF KRS 246.650 TO 246.660 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established in the State Treasury a separate trust and agency account to be known as the Kentucky ginseng fund to be administered by the Department of Agriculture.*
- (2) *Moneys in this fund shall be used to help administer the ginseng program as provided by Section 2 of this Act.*
- (3) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year, including interest, shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.*
- (4) *The fund may receive gifts, grants, federal funds, and any other funds both public and private.*

➔Section 4. KRS 246.990 is amended to read as follows:

- (1) Any person who violates subsection (2) of KRS 246.210, subsection (2) of KRS 246.220, or subsection (1) of KRS 246.420 shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for the first offense; he shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars

(\$1,000) and be confined in the county jail for not less than sixty (60) days nor more than one hundred and twenty (120) days, for each subsequent offense.

- (2) Any person who violates subsection (3) of KRS 246.220 shall be fined not less than five dollars (\$5) nor more than one hundred dollars (\$100) or be imprisoned for not more than ten (10) days, or both. Each day's hindering or refusal of access shall constitute a separate offense.
- (3) Any person who violates subsection (4) of KRS 246.220 shall be fined not less than two dollars (\$2) nor more than fifty dollars (\$50).
- (4) Any person who violates subsection (5) of KRS 246.220 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
- (5) Any person who violates subsection (6) of KRS 246.220 shall be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50).
- (6) Any person who violates subsection (7) of KRS 246.220 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned for not more than three (3) months, or both.
- (7) Any owner or operator of a dairy plant who shall fail to comply with the provisions of KRS 246.240 or any part thereof shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars (\$100).
- (8)
 - (a) *Any person who purchases ginseng knowing that the ginseng was taken, acquired, possessed, sold, transported, or purchased in violation of administrative regulations authorized under Section 2 of this Act shall be guilty of a Class A misdemeanor.*
 - (b) *The Commissioner or any peace officer may seize and take possession of any ginseng taken, acquired, possessed, sold, transported, or purchased by a person committing a violation of administrative regulations authorized under Section 2 of this Act. Any ginseng seized in accordance with this paragraph shall be impounded by the arresting officer and shall be taken before the court trying the person arrested.*
 - (c) *Upon conviction, the court trying the case shall have the discretion of determining whether any of the ginseng seized under paragraph (b) of this subsection shall be declared contraband. Any ginseng seized under paragraph (b) of this subsection is subject to being declared contraband. If any ginseng is declared contraband, the court shall enter an order accordingly. A copy of the order shall be forwarded to the Commissioner and the ginseng shall be placed in the custody of the arresting officer, to be delivered to the Commissioner.*
 - (d) *The Commissioner may sell, at the highest market price obtainable, with the approval of the Governor and Finance and Administration Cabinet, all contraband ginseng which comes into his or her possession under the order of any court. All proceeds arising from the sale of contraband ginseng shall be paid into the Kentucky ginseng fund established in Section 3 of this Act. A record of the sale, including the name of the purchaser and the price paid, shall be kept by the Commissioner.*~~Any person who violates any administrative regulation promulgated by the department under the provisions of KRS 246.660 shall have a civil fine imposed of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).~~
- (9) Any person who violates subsection (2) of KRS 246.420 shall be disqualified from exhibiting at an exhibition for a first offense, and shall be disqualified for up to five (5) years for a second or subsequent offense.

Signed by Governor March 10, 2011.