

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 4-39 of the North Dakota Century
2 Code, relating to cultivated ginseng dealers; and to amend and reenact sections 4-39-01,
3 4-39-02, 4-39-03, 4-39-04, 4-39-05, 4-39-06, and 4-39-07 of the North Dakota Century Code,
4 relating to cultivated ginseng.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 4-39-01 of the North Dakota Century Code is amended
7 and reenacted as follows:

8 **4-39-01. Definitions.**

9 In this chapter, unless the context otherwise requires:

10 1. ~~"Commissioner" means the agriculture commissioner.~~

NOTE: Because the title rewrite refers to the "agriculture commissioner," this definition is not necessary.

11 2. "Cultivated ginseng" means:

12 a. Dried ginseng dry root, live;

13 b. Live ginseng root;

14 c. Ginseng tissue culture; or

15 d. Ginseng seed propagated in this state.

NOTE: Please examine the placement of the phrase "propagated in this state" to determine whether it should refer only to ginseng seed or to the roots and tissue culture as well as the seed.

16 ~~3-2.~~ "Dealer" means a person who buys cultivated ginseng for the purpose of resale. The
17 term does not include a person who buys ~~cultivated~~dried ginseng dry root, solely for
18 the purpose of final retail sale to consumers in the United States.

NOTE: "Cultivated ginseng" is defined in Section 1 as more than merely the dried root.

19 ~~4-3.~~ "Ginseng" means *Panax quinquefolius* L.

1 ~~5.4.~~ "Grower" means a person who grows cultivated ginseng and who sells cultivated
2 ginseng to a dealer.

NOTE: The word "grows" is not appropriate in this definition. One does not grow "dried"
ginseng root.

3 ~~6.5.~~ "Out-of-state cultivated ginseng" means cultivated ginseng grown or nurtured outside
4 this state.

NOTE: Please clarify the reference to ginseng being grown or "nurtured."

5 **SECTION 2. AMENDMENT.** Section 4-39-02 of the North Dakota Century Code is amended
6 and reenacted as follows:

7 ~~4-39-02. Growers and dealers~~Ginseng grower - Registration - Fees.

8 ~~A person who desires to act as a grower or a dealer shall register with the commissioner on-~~
9 ~~a form provided by the commissioner. A person who acts as a dealer and a grower shall register~~
10 ~~as both. Each dealer shall pay a registration fee of twenty-five dollars. Each grower shall pay a~~
11 ~~registration fee of ten dollars. The fee must be submitted with the registration form. The~~
12 ~~commissioner shall assign a registration number to each person registered. Each dealer's~~
13 ~~registration is valid for one year from the date of issuance. Each grower's registration is valid for~~
14 ~~two years from the date of issuance.~~

15 1. Before a person may sell to a dealer any cultivated ginseng that the person has
16 grown, the person must register as a grower with the agriculture commissioner.

17 2. In order to register as a grower, the person must:

18 a. Obtain a registration form from the commissioner;

19 b. Complete the registration form;

20 c. Submit the completed registration form to the commissioner, together with a fee
21 in the amount of ten dollars; and

22 d. Receive a registration number from the commissioner.

23 3. Registration under this section is valid for two years from the date of issuance.

NOTE: In order to clarify the provisions relating to "growers" versus "dealers," as set forth
in the definitions (4-39-01), it is suggested that this section be separated into two parts.
The ensuing section addresses the registration of "dealers."

24 **SECTION 3.** A new section to chapter 4-39 of the North Dakota Century Code is created
25 and enacted as follows:

1 **Ginseng dealer - Registration - Fees.**

- 2 1. Before a person may purchase cultivated ginseng for the purpose of resale, the
3 person must register as a dealer with the agriculture commissioner.
- 4 2. In order to register as a dealer, the person must:
- 5 a. Obtain a registration form from the commissioner;
6 b. Complete the registration form;
7 c. Submit the completed registration form to the commissioner, together with a fee
8 in the amount of twenty-five dollars; and
9 d. Receive a registration number from the commissioner.
- 10 3. Registration under this section is valid for one year from the date of issuance.
- 11 4. This section does not apply to a person purchasing cultivated dry ginseng root for the
12 purpose of a final retail sale to a consumer in this country.

NOTE: Current law provides that a "person who acts as a dealer and a grower shall register as both." In looking at the definition section (4-39-01), this would appear to reference a person that grows ginseng and sells it to a dealer, presumably other than that person, and in turn buys cultivated ginseng, presumably in addition to that which the person has grown, for the purpose of resale. This needs to be examined in order to ensure that it is the intended result.

13 **SECTION 4. AMENDMENT.** Section 4-39-03 of the North Dakota Century Code is amended
14 and reenacted as follows:

15 **4-39-03. Sale or shipment of cultivated ginseng.**

- 16 1. Upon request, the agriculture commissioner shall provide each registered grower and
17 dealer with shipment certificates and report forms. The commissioner shall stamp
18 each shipment certificate and report form with the registration number of the grower or
19 dealer who requests the form. A shipment certificate and report form is valid only if
20 used during the registration period for which the stamped registration number of the
21 grower or dealer is issued. The commissioner may charge a fee not exceeding five
22 dollars to recover the costs related to providing shipment certificates and report forms.
- 23 2. Except as provided in subsection 6, ~~no~~ a person may not sell or ship cultivated ginseng
24 to a dealer or ship cultivated ginseng out of this state, unless the cultivated ginseng is
25 accompanied by a completed shipment certificate provided by the commissioner.¹ The
26 shipment certificate must specify the year in which the cultivated ginseng was
27 harvested. The person selling or shipping the cultivated ginseng shall submit a report
28 form describing to the commissioner the source of all cultivated ginseng included in

1 the sale or shipment. The report must be submitted within thirty days after the sale or
2 shipment. Each person who completes a shipment certificate or report form must
3 retain a duplicate copy for three years from the date of the sale or shipment.

NOTE:

¹This sentence needs to be reviewed for accuracy. It provides that, unless cultivated ginseng is accompanied by a shipping certificate, a person may not sell cultivated ginseng to a dealer, ship cultivated ginseng to a dealer (within or outside this state?), or ship cultivated ginseng out of this state - presumably to anyone. Is a shipping certificate necessary for the "sale" of cultivated ginseng?

4 3. ~~No~~A dealer may not purchase or receive cultivated ginseng unless it is accompanied
5 by a completed shipment certificate. A dealer shall retain a copy of each shipment
6 certificate received for a period of three years from the date of receipt.

NOTE: Please review the reference to purchasing cultivated ginseng versus receiving cultivated ginseng. It would appear that the shipping certificate should bear a relationship to the product being in transit, and not merely purchased.

7 4. ~~No~~A dealer may not purchase or receive ~~out-of-state~~ cultivated ginseng grown outside
8 this state unless it is accompanied by a ~~valid~~ certificate, issued by the state of origin,
9 certifying that the shipment consists solely of ~~out-of-state~~ cultivated ginseng grown out
10 of state. The certificate must include the source, the year of harvest, and the dry
11 weight of the ~~out-of-state~~ cultivated ginseng ~~included in the shipment~~. The dealer
12 ~~must~~shall retain a copy of each certificate received for a period of three years from the
13 date of receipt.

14 5. ~~No~~A person may not import ~~out-of-state~~ cultivated ginseng into this state unless the
15 imported shipment is accompanied by a ~~valid~~ certificate issued by the state of origin.¹
16 ~~No~~A person may not ship out-of-state cultivated ginseng using a shipment certificate
17 issued by this state.²

NOTE:

¹Generally, "importation" refers to a transaction that begins in a foreign country. This subsection references both importation and the "state of origin."

²The subsection needs to be reviewed. Section 1 defines cultivated ginseng to mean ginseng seed propagated "in" this state.

18 6. Subsection 2¹ does not apply to a person who sells or ships cultivated ginseng dry root
19 to a person outside this state ~~who~~ provided the person is buying or receiving the
20 cultivated ginseng dry root solely for the purpose of final retail sale to consumers² in
21 ~~the United States, if this country, and further provided that~~ the person selling or

- 1 shipping the cultivated ginseng dry root keeps a record of the sale or shipment which
2 includes the following:
- 3 a. The name and address of the purchaser or recipient;
 - 4 b. The dry weight of the cultivated ginseng dry root included in the sale or
5 shipment;
 - 6 c. The date of the sale or shipment;
 - 7 d. The source of all of the cultivated ginseng dry root included in the sale or
8 shipment; and
 - 9 e. The year in which the cultivated ginseng dry root was harvested.

NOTE:

¹This exception to subsection 2 should be placed with subsection 2.

²How does one know that the sole purpose of a shipment will be for final retail sale to consumers in the United States?

10 **SECTION 5. AMENDMENT.** Section 4-39-04 of the North Dakota Century Code is amended
11 and reenacted as follows:

12 **4-39-04. ~~Inspection or submission~~Availability of records.**

13 Each dealer ~~or~~ and grower shall make all records, ~~including records that are located outside~~
14 ~~of this state,~~ required to be kept under this chapter available for inspection or copying ~~by~~ to the
15 agriculture commissioner upon the commissioner's request.

16 **SECTION 6. AMENDMENT.** Section 4-39-05 of the North Dakota Century Code is amended
17 and reenacted as follows:

18 **4-39-05. Certain records not public information.**

19 ~~Documents and~~ Any records relating ~~related~~ related to transactions in cultivated ginseng dry root¹
20 and submitted to the agriculture commissioner pursuant to this chapter by a grower or dealer
21 are not public information subject to section 44-04-18.

NOTE:

¹Are records pertaining to forms of cultivated ginseng other than the dry root intended to be open?

22 **SECTION 7. AMENDMENT.** Section 4-39-06 of the North Dakota Century Code is amended
23 and reenacted as follows:

1 **4-39-06. Enforcement actions.**

- 2 1. The agriculture commissioner may deny, suspend, or revoke the registration of any
3 dealer or grower and may invalidate shipment certificates completed by the dealer or
4 grower, if the commissioner finds that the dealer or grower has violated this chapter.

NOTE: What is the consequence of an invalidated shipping certificate?

- 5 2. The commissioner may, without prior notice or hearing, suspend or invalidate the
6 registration and shipment certificates of a dealer or grower if the commissioner finds
7 that there is a need for immediate action to prevent a violation of this chapter.

- 8 3. Any action ~~of~~by the commissioner pursuant to this section must be in writing.

- 9 4. Any person who receives a notice under this section is entitled to a hearing before the
10 commissioner, if requested within ten days after receipt of the notice. Hearings must
11 be conducted within ten days after receipt of a request for the hearing. Enforcement of
12 any action may not be stayed pending the hearing.

NOTE: The reference to a requested hearing within 10 days is not a statutory problem.
However, one might want to determine if this is an impractically short period within which to
meet the requirement.

13 **SECTION 8. AMENDMENT.** Section 4-39-07 of the North Dakota Century Code is amended
14 and reenacted as follows:

15 **4-39-07. Penalties.**

- 16 1. A person who violates this chapter, or rules adopted to implement this chapter, is guilty
17 of an infraction.
18 2. A person who violates this chapter, or rules adopted to implement this chapter, is
19 subject to a civil penalty not to exceed five hundred dollars. The civil penalty may be
20 adjudicated by the courts or by the agriculture commissioner through an administrative
21 hearing pursuant to chapter 28-32.
22 3. The commissioner may maintain an appropriate civil action in the name of the state
23 against any person violating this chapter or rules adopted to implement this chapter.

NOTE: There appear to be no rules implementing this chapter. In the event that rules are
adopted, both the criminal and civil penalties set forth in this section would be applicable.