

## **BILL ANALYSIS**

S.B. 212  
By: Shapleigh  
Agriculture & Livestock  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The current trend in home landscaping is xeriscaping, a water-conserving landscaping method. This trend, combined with tough Arizona laws regulating the desert plant trade, has made the West Texas desert area a prime target for harvesting of cacti and other succulents. So-called "cactus rustlers" take desert plants from public land or from private land without permission. The plants are then sold for profit in Texas and other states, especially Arizona and California. Some private landowners also harvest desert plants on their own land.

The Chihuahuan Desert is one of the most biologically rich deserts in the world, home to almost a quarter of the 1,500 cactus species known to science, including many species found nowhere else. The removal of these plants in large numbers is seriously damaging to the delicate desert ecosystem. Removing too many of these crucial cacti and desert plants deprive desert dwellers, such as mountain lions, hummingbirds, woodpeckers, and bats, of food and shelter and disrupts the ecological balance of the area. The United States ranks among the world's largest cactus producers, and markets with the highest concentration of growers and harvesters are located in the Southwest. Between 1998 and June 2001, almost 100,000 succulents worth an estimated \$3 million were shipped from Texas to Arizona. These included both cacti harvested from the wild in Texas and illegal imports from Mexico.

Mexican authorities seized almost 800 cactus specimens from travelers entering or passing through the U.S. from Mexico in 1998. The trade taking place is massive, and it is likely that it will continue to grow; landscaping plants are in high demand and the demand for desert plants may soon surpass the desert's natural supply.

S.B. 212 amends current law relating to the sale or transportation of certain desert plants, and provides penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Agriculture in SECTION 1 (Sections 122.002 and 122.004, Agriculture Code) of this bill.

### **ANALYSIS**

SECTION 1. Amends Subtitle F, Title 5, Agriculture Code, by adding Chapter 122, as follows:

CHAPTER 122. SALE OF DESERT PLANTS Sec. 122.001.

DEFINITION. Defines "desert plant." Sec. 122.002. ADMINISTRATION. Requires the Texas Department of Agriculture (TDA) to administer this chapter and adopt rules necessary for its enforcement. Sec. 122.003.

REQUIREMENTS FOR SALE OR TRANSPORTATION. Prohibits a person from selling or offering for sale to a first purchaser a desert plant or transport for transfer out of this state a desert plant unless the person has documentation as required by TDA rule that the desert plant was harvested for sale in compliance with an agreement entered into in accordance with rules adopted under Section 122.004

Sec. 122.004. REGISTRATION AND COMPLIANCE AGREEMENT.

(a) Requires a person who grows or harvests desert plants for sale to register with TDA and enter into a compliance agreement with TDA to ensure that a manifest or other form of documentation accompanies the person's desert plants when any of the person's desert plants are sold or offered for sale to a first purchaser or transported for transfer out of this state.

(b) Requires TDA by rule to establish minimum standards for compliance agreements and the manifests or other forms of documentation to be provided in accordance with compliance agreements. Requires that a manifest or other form of documentation show the source of the desert plants and verify compliance with the compliance agreement conditions.

(c) Requires TDA to adopt rules, including procedures for inspection or other mechanisms, to ensure that a manifest or other form of documentation provided under a compliance agreement does not misrepresent the source of a desert plant.

(d) Requires a person to include with an application for registration under this section a written statement that the desert plants provided by the person for sale will be harvested from that person's property or written documentation that the owner of the property from which the desert plants are to be harvested grants the person the authority to harvest the desert plants from that property. (e) Authorizes TDA to charge a registration and compliance agreement fee to offset the costs of administering this chapter.

#### Sec. 122.005. DOCUMENTATION FOR SALE OR TRANSPORTATION OF DESERT PLANTS.

(a) Requires a person, in accordance with TDA rules and the agreement entered into under Section 122.004, to provide to a first purchaser or to a person who sells or offers for sale to a first purchaser the person's desert plants or transports for transfer out of this state the person's desert plants a manifest or other form of documentation of the source of the desert plants.

(b) Requires that a manifest or other form of documentation of the source of a desert plant accompany the desert plant when sold or offered for sale or transported for transfer out of this state.

Sec. 122.006. STOP-SALE ORDER. Authorizes TDA, in enforcing this chapter, to issue and enforce a written or printed order to stop the sale of a desert plant or a shipment of desert plants that is not accompanied by a manifest or other form of documentation as provided by Section 122.005. Prohibits a person, if an order is issued, from selling the plant or shipment until proper documentation is provided.

#### Sec. 122.007. AUTHORITY TO SEIZE DESERT PLANTS.

(a) Authorizes TDA with or without process, in enforcing this chapter, to seize a desert plant or a shipment of desert plants that is not accompanied by a manifest or other form of documentation as provided by Section 122.005 and is intended for transfer out of this state.

(b) Requires TDA to return desert plants seized under this section to the owner of the land from which they were harvested; or if TDA is not able to identify the owner of the land from which the desert plants were harvested, deliver them to the Parks and Wildlife Department.

#### Sec. 122.008. PENALTY.

(a) Provides that a person commits an offense if the person advertises, sells, or offers for sale to a first purchaser a desert plant or a shipment of desert plants that is not accompanied by a manifest or other form of documentation as provided by Section 122.005.

(b) Provides that an offense under this section is punishable by a fine not to exceed \$1,000, imprisonment for a term not to exceed 180 days, or both fine and imprisonment under this subsection.

SECTION 2. Amends Section 12.020, Agriculture Code, by amending Subsections (a) and (b) and adding Subsection (c-1), as follows:

(a) Provides that if a person violates a provision of this code described by Subsection (c) (relating to applicable penalty amounts to the provisions of this code) or (c-1) of this section or a rule or order adopted by TDA under a provision of this code described by Subsection (c) or (c-1) of this section, TDA is authorized to assess an administrative penalty against the person as provided by this section.

(b) Makes a conforming change. (c-1) Provides that in addition to provisions described by Subsection (c), Chapter 122 is subject to this section and the applicable penalty amount is \$500.

SECTION 3. (a) Requires TDA to adopt rules to administer Chapter 122, Agriculture Code, as added by this Act, not later than December 1, 2009.

(b) Makes application of Act prospective to January 1, 2010.

**EFFECTIVE DATE**

SECTION 4. Effective date: September 1, 2009.