

By: Shapleigh

S.B. No. 212

A BILL TO BE ENTITLED

AN ACT

relating to the sale or transportation of certain desert plants;  
providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 5, Agriculture Code, is amended by adding Chapter 122 to read as follows:

CHAPTER 122. SALE OF DESERT PLANTS

Sec. 122.001. DEFINITION. In this chapter, "desert plant" means the following genera of plants:

- (1) Agave;
- (2) Ariocarpus;
- (3) Echinocactus;
- (4) Echinocereus;
- (5) Ferocactus;
- (6) Fouquieria;
- (7) Mammillaria; and
- (8) Yucca.

Sec. 122.002. ADMINISTRATION. The department shall administer this chapter and adopt rules necessary for its enforcement.

Sec. 122.003. REQUIREMENTS FOR SALE OR TRANSPORTATION. A person may not sell or offer 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 department rule

1 that the desert plant was harvested for sale in compliance with an  
2 agreement entered into in accordance with rules adopted under  
3 Section 122.004.

4 Sec. 122.004. REGISTRATION AND COMPLIANCE AGREEMENT.

5 (a) A person who grows or harvests desert plants for sale must  
6 register with the department and enter into a compliance agreement  
7 with the department to ensure that a manifest or other form of  
8 documentation accompanies the person's desert plants when any of  
9 the person's desert plants are:

- 10 (1) sold or offered for sale to a first purchaser; or  
11 (2) transported for transfer out of this state.

12 (b) The department by rule shall establish minimum  
13 standards for compliance agreements and the manifests or other  
14 forms of documentation to be provided in accordance with compliance  
15 agreements. A manifest or other form of documentation must:

- 16 (1) show the source of the desert plants; and  
17 (2) verify compliance with the compliance agreement  
18 conditions.

19 (c) The department shall adopt rules, including procedures  
20 for inspection or other mechanisms, to ensure that a manifest or  
21 other form of documentation provided under a compliance agreement  
22 does not misrepresent the source of a desert plant.

23 (d) A person must include with an application for  
24 registration under this section:

- 25 (1) a written statement that the desert plants  
26 provided by the person for sale will be harvested from that person's  
27 property; or

1           (2) written documentation that the owner of the  
2 property from which the desert plants are to be harvested grants the  
3 person the authority to harvest the desert plants from that  
4 property.

5           (e) The department may charge a registration and compliance  
6 agreement fee to offset the costs of administering this chapter.

7           Sec. 122.005. DOCUMENTATION FOR SALE OR TRANSPORTATION OF  
8 DESERT PLANTS. (a) In accordance with department rules and the  
9 agreement entered into under Section 122.004, a person shall  
10 provide to a first purchaser, or to a person who sells or offers for  
11 sale to a first purchaser the person's desert plants or transports  
12 for transfer out of this state the person's desert plants, a  
13 manifest or other form of documentation of the source of the desert  
14 plants.

15           (b) A manifest or other form of documentation of the source  
16 of a desert plant must accompany the desert plant when:

17                   (1) sold or offered for sale; or

18                   (2) transported for transfer out of this state.

19           Sec. 122.006. STOP-SALE ORDER. In enforcing this chapter,  
20 the department may issue and enforce a written or printed order to  
21 stop the sale of a desert plant or a shipment of desert plants that  
22 is not accompanied by a manifest or other form of documentation as  
23 provided by Section 122.005. If an order is issued, a person may  
24 not sell the desert plant or shipment until proper documentation is  
25 provided.

26           Sec. 122.007. AUTHORITY TO SEIZE DESERT PLANTS. (a) In  
27 enforcing this chapter, the department with or without process may

1 seize a desert plant or a shipment of desert plants that is:

2 (1) not accompanied by a manifest or other form of  
3 documentation as provided by Section 122.005; and

4 (2) intended for transfer out of this state.

5 (b) The department shall:

6 (1) return desert plants seized under this section to  
7 the owner of the land from which they were harvested; or

8 (2) if the department is not able to identify the owner  
9 of the land from which the desert plants were harvested, deliver  
10 them to the Parks and Wildlife Department.

11 Sec. 122.008. PENALTY. (a) A person commits an offense if  
12 the person advertises, sells, or offers for sale to a first  
13 purchaser a desert plant or a shipment of desert plants that is not  
14 accompanied by a manifest or other form of documentation as  
15 provided by Section 122.005.

16 (b) An offense under this section is punishable by:

17 (1) a fine not to exceed \$1,000;

18 (2) imprisonment for a term not to exceed 180 days; or

19 (3) both fine and imprisonment under this subsection.

20 SECTION 2. Section 12.020, Agriculture Code, is amended by  
21 amending Subsections (a) and (b) and adding Subsection (c-1) to  
22 read as follows:

23 (a) If a person violates a provision of this code described  
24 by Subsection (c) or (c-1) of this section or a rule or order  
25 adopted by the department under a provision of this code described  
26 by Subsection (c) or (c-1) of this section, the department may  
27 assess an administrative penalty against the person as provided by

1 this section.

2 (b) The penalty for each violation may be in an amount not to  
3 exceed the maximum provided by Subsection (c) or (c-1) of this  
4 section. Each day a violation continues or occurs may be considered  
5 a separate violation for purposes of penalty assessments.

6 (c-1) In addition to provisions described by Subsection  
7 (c), Chapter 122 is subject to this section and the applicable  
8 penalty amount is \$500.

9 SECTION 3. (a) Not later than December 1, 2009, the  
10 Department of Agriculture shall adopt rules to administer Chapter  
11 122, Agriculture Code, as added by this Act.

12 (b) Chapter 122, Agriculture Code, as added by this Act,  
13 applies only to a sale, an offer for sale, or the transportation of  
14 a desert plant on or after January 1, 2010.

15 SECTION 4. This Act takes effect September 1, 2009.