

1-1 By: Shapleigh S.B. No. 212
1-2 (In the Senate - Filed November 10, 2008; February 11, 2009,
1-3 read first time and referred to Committee on Agriculture and Rural
1-4 Affairs; April 20, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 April 20, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 212 By: Hegar

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the sale or transportation of certain desert plants;
1-11 providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle F, Title 5, Agriculture Code, is
1-14 amended by adding Chapter 122 to read as follows:

1-15 CHAPTER 122. SALE OF DESERT PLANTS

1-16 Sec. 122.001. DEFINITION. In this chapter, "desert plant"
1-17 means the following genera of plants:

- 1-18 (1) Agave;
- 1-19 (2) Ariocarpus;
- 1-20 (3) Echinocactus;
- 1-21 (4) Echinocereus;
- 1-22 (5) Ferocactus;
- 1-23 (6) Fouquieria;
- 1-24 (7) Mammillaria; and
- 1-25 (8) Yucca.

1-26 Sec. 122.002. ADMINISTRATION. The department shall
1-27 administer this chapter and adopt rules necessary for its
1-28 enforcement.

1-29 Sec. 122.003. REQUIREMENTS FOR SALE OR TRANSPORTATION. A
1-30 person may not sell or offer for sale to a first purchaser a desert
1-31 plant or transport for transfer out of this state a desert plant
1-32 unless the person has documentation as required by department rule
1-33 that the desert plant was harvested for sale in compliance with an
1-34 agreement entered into in accordance with rules adopted under
1-35 Section 122.004.

1-36 Sec. 122.004. REGISTRATION AND COMPLIANCE AGREEMENT.

1-37 (a) A person who grows or harvests desert plants for sale must
1-38 register with the department and enter into a compliance agreement
1-39 with the department to ensure that a manifest or other form of
1-40 documentation accompanies the person's desert plants when any of
1-41 the person's desert plants are:

- 1-42 (1) sold or offered for sale to a first purchaser; or
- 1-43 (2) transported for transfer out of this state.

1-44 (b) The department by rule shall establish minimum
1-45 standards for compliance agreements and the manifests or other
1-46 forms of documentation to be provided in accordance with compliance
1-47 agreements. A manifest or other form of documentation must:

- 1-48 (1) show the source of the desert plants; and
- 1-49 (2) verify compliance with the compliance agreement
1-50 conditions.

1-51 (c) The department shall adopt rules, including procedures
1-52 for inspection or other mechanisms, to ensure that a manifest or
1-53 other form of documentation provided under a compliance agreement
1-54 does not misrepresent the source of a desert plant.

1-55 (d) A person must include with an application for
1-56 registration under this section:

1-57 (1) a written statement that the desert plants
1-58 provided by the person for sale will be harvested from that person's
1-59 property; or

1-60 (2) written documentation that the owner of the
1-61 property from which the desert plants are to be harvested grants the
1-62 person the authority to harvest the desert plants from that
1-63 property.

2-1 (e) The department may charge a registration and compliance
2-2 agreement fee to offset the costs of administering this chapter.

2-3 Sec. 122.005. DOCUMENTATION FOR SALE OR TRANSPORTATION OF
2-4 DESERT PLANTS. (a) In accordance with department rules and the
2-5 agreement entered into under Section 122.004, a person shall
2-6 provide to a first purchaser, or to a person who sells or offers for
2-7 sale to a first purchaser the person's desert plants or transports
2-8 for transfer out of this state the person's desert plants, a
2-9 manifest or other form of documentation of the source of the desert
2-10 plants.

2-11 (b) A manifest or other form of documentation of the source
2-12 of a desert plant must accompany the desert plant when:

- 2-13 (1) sold or offered for sale; or
- 2-14 (2) transported for transfer out of this state.

2-15 Sec. 122.006. STOP-SALE ORDER. In enforcing this chapter,
2-16 the department may issue and enforce a written or printed order to
2-17 stop the sale of a desert plant or a shipment of desert plants that
2-18 is not accompanied by a manifest or other form of documentation as
2-19 provided by Section 122.005. If an order is issued, a person may
2-20 not sell the desert plant or shipment until proper documentation is
2-21 provided.

2-22 Sec. 122.007. AUTHORITY TO SEIZE DESERT PLANTS. (a) In
2-23 enforcing this chapter, the department with or without process may
2-24 seize a desert plant or a shipment of desert plants that is:

- 2-25 (1) not accompanied by a manifest or other form of
2-26 documentation as provided by Section 122.005; and
- 2-27 (2) intended for transfer out of this state.

2-28 (b) The department shall:

- 2-29 (1) return desert plants seized under this section to
2-30 the owner of the land from which they were harvested; or
- 2-31 (2) if the department is not able to identify the owner
2-32 of the land from which the desert plants were harvested, deliver
2-33 them to the Parks and Wildlife Department.

2-34 Sec. 122.008. PENALTY. (a) A person commits an offense if
2-35 the person advertises, sells, or offers for sale to a first
2-36 purchaser a desert plant or a shipment of desert plants that is not
2-37 accompanied by a manifest or other form of documentation as
2-38 provided by Section 122.005.

2-39 (b) An offense under this section is punishable by:

- 2-40 (1) a fine not to exceed \$1,000;
- 2-41 (2) imprisonment for a term not to exceed 180 days; or
- 2-42 (3) both fine and imprisonment under this subsection.

2-43 SECTION 2. Section 12.020, Agriculture Code, is amended by
2-44 amending Subsections (a) and (b) and adding Subsection (c-1) to
2-45 read as follows:

2-46 (a) If a person violates a provision of this code described
2-47 by Subsection (c) or (c-1) of this section or a rule or order
2-48 adopted by the department under a provision of this code described
2-49 by Subsection (c) or (c-1) of this section, the department may
2-50 assess an administrative penalty against the person as provided by
2-51 this section.

2-52 (b) The penalty for each violation may be in an amount not to
2-53 exceed the maximum provided by Subsection (c) or (c-1) of this
2-54 section. Each day a violation continues or occurs may be considered
2-55 a separate violation for purposes of penalty assessments.

2-56 (c-1) In addition to provisions described by Subsection
2-57 (c), Chapter 122 is subject to this section and the applicable
2-58 penalty amount is \$500.

2-59 SECTION 3. (a) Not later than December 1, 2009, the
2-60 Department of Agriculture shall adopt rules to administer Chapter
2-61 122, Agriculture Code, as added by this Act.

2-62 (b) Chapter 122, Agriculture Code, as added by this Act,
2-63 applies only to a sale, an offer for sale, or the transportation of
2-64 a desert plant on or after January 1, 2010.

2-65 SECTION 4. This Act takes effect September 1, 2009.

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