

By: Rodriguez

S.B. No. 616

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the sale or transportation of certain desert plants;
3 providing a penalty.

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

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

7 CHAPTER 122. SALE OF DESERT PLANTS

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

- 10 (1) Agave;
- 11 (2) Ariocarpus;
- 12 (3) Echinocactus;
- 13 (4) Echinocereus;
- 14 (5) Ferocactus;
- 15 (6) Fouquieria;
- 16 (7) Mammillaria; and
- 17 (8) Yucca.

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

21 Sec. 122.003. REQUIREMENTS FOR SALE OR TRANSPORTATION. A
22 person may not sell or offer for sale to a first purchaser a desert
23 plant, or transport for transfer out of this state a desert plant,
24 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 manifest
13 or other form of documentation of the source of the desert plants.

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

16 (1) sold or offered for sale; or

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

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

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

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

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

4 (b) The department shall:

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

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

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

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

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

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

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

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

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

27 (b) The penalty for each violation may be in an amount not to

1 exceed the maximum provided by Subsection (c) or (c-1) [~~of this~~
2 ~~section~~]. Each day a violation continues or occurs may be
3 considered a separate violation for purposes of penalty
4 assessments.

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

8 SECTION 3. (a) Not later than December 1, 2011, the
9 Department of Agriculture shall adopt rules to administer Chapter
10 122, Agriculture Code, as added by this Act.

11 (b) Chapter 122, Agriculture Code, as added by this Act,
12 applies only to a sale, an offer for sale, or the transportation of
13 a desert plant on or after January 1, 2012.

14 SECTION 4. This Act takes effect September 1, 2011.