

1-1 By: Rodriguez S.B. No. 616
1-2 (In the Senate - Filed February 11, 2011;
1-3 February 17, 2011, read first time and referred to Committee on
1-4 Agriculture and Rural Affairs; April 13, 2011, reported favorably
1-5 by the following vote: Yeas 3, Nays 0; April 13, 2011, sent to
1-6 printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the sale or transportation of certain desert plants;
1-10 providing a penalty.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subtitle F, Title 5, Agriculture Code, is
1-13 amended by adding Chapter 122 to read as follows:

1-14 CHAPTER 122. SALE OF DESERT PLANTS

1-15 Sec. 122.001. DEFINITION. In this chapter, "desert plant"
1-16 means the following genera of plants:

- 1-17 (1) Agave;
1-18 (2) Ariocarpus;
1-19 (3) Echinocactus;
1-20 (4) Echinocereus;
1-21 (5) Ferocactus;
1-22 (6) Fouquieria;
1-23 (7) Mammillaria; and
1-24 (8) Yucca.

1-25 Sec. 122.002. ADMINISTRATION. The department shall
1-26 administer this chapter and adopt rules necessary for its
1-27 enforcement.

1-28 Sec. 122.003. REQUIREMENTS FOR SALE OR TRANSPORTATION. A
1-29 person may not sell or offer for sale to a first purchaser a desert
1-30 plant, or transport for transfer out of this state a desert plant,
1-31 unless the person has documentation as required by department rule
1-32 that the desert plant was harvested for sale in compliance with an
1-33 agreement entered into in accordance with rules adopted under
1-34 Section 122.004.

1-35 Sec. 122.004. REGISTRATION AND COMPLIANCE AGREEMENT.

1-36 (a) A person who grows or harvests desert plants for sale must
1-37 register with the department and enter into a compliance agreement
1-38 with the department to ensure that a manifest or other form of
1-39 documentation accompanies the person's desert plants when any of
1-40 the person's desert plants are:

- 1-41 (1) sold or offered for sale to a first purchaser; or
1-42 (2) transported for transfer out of this state.

1-43 (b) The department by rule shall establish minimum
1-44 standards for compliance agreements and the manifests or other
1-45 forms of documentation to be provided in accordance with compliance
1-46 agreements. A manifest or other form of documentation must:

- 1-47 (1) show the source of the desert plants; and
1-48 (2) verify compliance with the compliance agreement
1-49 conditions.

1-50 (c) The department shall adopt rules, including procedures
1-51 for inspection or other mechanisms, to ensure that a manifest or
1-52 other form of documentation provided under a compliance agreement
1-53 does not misrepresent the source of a desert plant.

1-54 (d) A person must include with an application for
1-55 registration under this section:

1-56 (1) a written statement that the desert plants
1-57 provided by the person for sale will be harvested from that person's
1-58 property; or

1-59 (2) written documentation that the owner of the
1-60 property from which the desert plants are to be harvested grants the
1-61 person the authority to harvest the desert plants from that
1-62 property.

1-63 (e) The department may charge a registration and compliance
1-64 agreement fee to offset the costs of administering this chapter.

2-1 Sec. 122.005. DOCUMENTATION FOR SALE OR TRANSPORTATION OF
 2-2 DESERT PLANTS. (a) In accordance with department rules and the
 2-3 agreement entered into under Section 122.004, a person shall
 2-4 provide to a first purchaser or to a person who sells or offers for
 2-5 sale to a first purchaser the person's desert plants or transports
 2-6 for transfer out of this state the person's desert plants a manifest
 2-7 or other form of documentation of the source of the desert plants.

2-8 (b) A manifest or other form of documentation of the source
 2-9 of a desert plant must accompany the desert plant when:

2-10 (1) sold or offered for sale; or

2-11 (2) transported for transfer out of this state.

2-12 Sec. 122.006. STOP-SALE ORDER. In enforcing this chapter,
 2-13 the department may issue and enforce a written or printed order to
 2-14 stop the sale of a desert plant or a shipment of desert plants that
 2-15 is not accompanied by a manifest or other form of documentation as
 2-16 provided by Section 122.005. If an order is issued, a person may
 2-17 not sell the desert plant or shipment until proper documentation is
 2-18 provided.

2-19 Sec. 122.007. AUTHORITY TO SEIZE DESERT PLANTS. (a) In
 2-20 enforcing this chapter, the department with or without process may
 2-21 seize a desert plant or a shipment of desert plants that is:

2-22 (1) not accompanied by a manifest or other form of
 2-23 documentation as provided by Section 122.005; and

2-24 (2) intended for transfer out of this state.

2-25 (b) The department shall:

2-26 (1) return desert plants seized under this section to
 2-27 the owner of the land from which they were harvested; or

2-28 (2) if the department is not able to identify the owner
 2-29 of the land from which the desert plants were harvested, deliver
 2-30 them to the Parks and Wildlife Department.

2-31 Sec. 122.008. PENALTY. (a) A person commits an offense if
 2-32 the person advertises, sells, or offers for sale to a first
 2-33 purchaser a desert plant or a shipment of desert plants that is not
 2-34 accompanied by a manifest or other form of documentation as
 2-35 provided by Section 122.005.

2-36 (b) An offense under this section is punishable by:

2-37 (1) a fine not to exceed \$1,000;

2-38 (2) imprisonment for a term not to exceed 180 days; or

2-39 (3) both fine and imprisonment under this subsection.

2-40 SECTION 2. Section 12.020, Agriculture Code, is amended by
 2-41 amending Subsections (a) and (b) and adding Subsection (c-1) to
 2-42 read as follows:

2-43 (a) If a person violates a provision of law described by
 2-44 Subsection (c) or (c-1) or a rule or order adopted by the department
 2-45 under a provision of law described by Subsection (c) or (c-1), the
 2-46 department may assess an administrative penalty against the person
 2-47 as provided by this section.

2-48 (b) The penalty for each violation may be in an amount not to
 2-49 exceed the maximum provided by Subsection (c) or (c-1) [of this
 2-50 section]. Each day a violation continues or occurs may be
 2-51 considered a separate violation for purposes of penalty
 2-52 assessments.

2-53 (c-1) In addition to provisions described by Subsection
 2-54 (c), Chapter 122 is subject to this section and the applicable
 2-55 penalty amount is \$500.

2-56 SECTION 3. (a) Not later than December 1, 2011, the
 2-57 Department of Agriculture shall adopt rules to administer Chapter
 2-58 122, Agriculture Code, as added by this Act.

2-59 (b) Chapter 122, Agriculture Code, as added by this Act,
 2-60 applies only to a sale, an offer for sale, or the transportation of
 2-61 a desert plant on or after January 1, 2012.

2-62 SECTION 4. This Act takes effect September 1, 2011.

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