

BILL ANALYSIS

C.S.H.B. 1825
By: González, Mary
Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that the illegal harvesting of cacti and other succulents is seriously damaging the delicate Chihuahuan Desert, which reaches into West Texas, and that desert plants from the West Texas desert area have been taken from public and private land without permission and sold for profit throughout the United States. The parties contend that, as this trade continues to grow, the illegal harvesting of desert plants will increase, requiring immediate action to avoid permanent damage to the West Texas desert area. C.S.H.B. 1825 seeks to address this problem by proposing new law relating to the sale or transportation of certain desert plants.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Agriculture in SECTIONS 1 and 3 of this bill.

ANALYSIS

C.S.H.B. 1825 amends the Agriculture Code to prohibit a person from selling, offering for sale to a commercial purchaser, or transporting for transfer out of Texas a desert plant, as defined by the bill, unless the person complies with certain bill provisions relating to a registration and compliance agreement and to documentation provided under a compliance agreement and Department of Agriculture (TDA) rules on providing documentation of the source of the desert plant, or unless the person owns the property from which the desert plant was harvested and provides with the plant a shipping order or other document showing the source of the plant or of a group of plants that includes the plant. The bill requires a person who grows desert plants on or harvests desert plants from property owned by another person for sale to register with the TDA and enter into a compliance agreement with the TDA that requires the person to provide an applicable manifest or other form of documentation during a sale or transfer. The bill requires the 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. The bill requires a manifest or other form of documentation to show the source of the desert plants and verify compliance with the compliance agreement conditions. The bill requires the 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. The bill requires a person to include with an application for registration 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 plants from the property. The bill authorizes the TDA to charge a registration and compliance agreement fee to offset the costs of administering the bill's provisions.

C.S.H.B. 1825 requires a person who sells or offers for sale a desert plant and has entered into a compliance agreement, in accordance with TDA rules, to provide a manifest or other form of documentation of the source of the desert plant to a commercial purchaser, a person who sells or offers for sale the desert plant to a commercial purchaser, or a person who transports the desert

plant for transfer out of Texas. The bill requires the manifest or other form of documentation to accompany the desert plant when the plant is sold or offered for sale or transported for transfer out of Texas.

C.S.H.B. 1825 authorizes the TDA, in enforcing the bill's provisions, 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 required manifest or other form of documentation and prohibits a person from selling a desert plant or shipment until proper documentation is provided if an order is issued. The bill authorizes the TDA, in enforcing the bill's provisions, with or without process to seize a desert plant or a shipment of desert plants that is not accompanied by a required manifest or other form of documentation and is intended for transfer out of Texas. The bill requires the TDA to return seized desert plants to the owner of the land from which they were harvested or, if the TDA is not able to identify such an owner, to deliver them to the Parks and Wildlife Department.

C.S.H.B. 1825 makes it an offense punishable by a fine not to exceed \$1,000, imprisonment for a term not to exceed 180 days, or both the fine and imprisonment to advertise, sell, or offer for sale to a commercial purchaser a desert plant or a shipment of desert plants that is not accompanied by a required manifest or other form of documentation. The bill authorizes the TDA to assess an administrative penalty of \$500 for a violation of the bill's provisions or a rule or order adopted by the TDA under those provisions but specifies that such authorization does not authorize the TDA to assess an administrative penalty against a person who owns the property from which a desert plant was harvested and provides with the plant a shipping order or other document showing the source of the plant or of a group of plants that includes the plant.

C.S.H.B. 1825 requires the TDA to adopt rules to administer the bill's provisions not later than December 1, 2013. The bill applies only to a desert plant that is sold, offered for sale, or transported on or after January 1, 2014.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1825 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

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

SUBTITLE F. PRODUCTION, PROCESSING, AND SALE OF NURSERY PRODUCTS

CHAPTER 122. SALE OR TRANSPORT OF DESERT PLANTS

Sec. 122.001. DEFINITIONS. In this chapter:

HOUSE COMMITTEE SUBSTITUTE

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

SUBTITLE F. PRODUCTION, PROCESSING, AND SALE OF NURSERY PRODUCTS

CHAPTER 121. SALE OF DESERT PLANTS

Sec. 121.001. DEFINITIONS. In this chapter:

(1) "Commercial purchaser" means a person who purchases a plant for the

(1) "Desert plant" means the following genera of plants:

- (A) Agave;
- (B) Ariocarpus;
- (C) Echinocactus;
- (D) Echinocereus;
- (E) Ferocactus;
- (F) Fouquieria;
- (G) Mammillaria; and
- (H) Yucca.

(2) "First purchaser" means a person who makes the first purchase of a plant after the plant is harvested.

Sec. 122.002. ADMINISTRATION.

Sec. 122.003. REQUIREMENTS FOR SALE OR TRANSPORTATION.

(a) 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 includes with the plant:

(1) a manifest or other form of documentation showing the source of the plant;

(2) verification that the manifest or other form of documentation complies with department rules adopted under this section; and

(3) verification that the harvest and sale of the plant complies with a compliance agreement described by Section 122.004.

(b) The department by rule shall establish minimum standards for the manifest and documentation described by Subsection (a). The rules must include procedures for inspection or other mechanisms to ensure that a manifest or other form of documentation does not misrepresent the source of a desert plant.

Sec. 122.004. REGISTRATION AND COMPLIANCE AGREEMENT. (a) A person who grows or harvests a desert plant for sale or transport out of this state must register with the department and enter into a compliance agreement with the department describing the terms under which a person may sell or transport the plant.

purpose of wholesale or retail sale.

(2) "Desert plant" means the following genera of plants:

- (A) Agave;
- (B) Ariocarpus;
- (C) Echinocactus;
- (D) Echinocereus;
- (E) Ferocactus;
- (F) Fouquieria;
- (G) Mammillaria; and
- (H) Yucca.

Sec. 121.002. ADMINISTRATION.

Sec. 121.003. REQUIREMENTS FOR SALE OR TRANSPORTATION.

A person may not sell or offer for sale to a commercial purchaser a desert plant or transport for transfer out of this state a desert plant unless the person:

(1) complies with Sections 121.004 and 121.005 and department rules on providing documentation of the source of the desert plant; or

(2) owns the property from which the desert plant was harvested and provides with the plant a shipping order or other document showing the source of the plant or of a group of plants that includes the plant.

No equivalent provision, but see added Sec. 121.004(b) below.

Sec. 121.004. REGISTRATION AND COMPLIANCE AGREEMENT. (a) A person who grows desert plants on or harvests desert plants from property owned by another person for sale must register with the department and enter into a compliance agreement with the department that requires the person to provide a manifest or other form of documentation during a sale or transfer in compliance with Section

(b) A person must include with an application for registration under this section:

(1) a written statement that a desert plant provided by the person for sale will be harvested from that person's property; or

(2) written documentation that the owner of the property from which the desert plant is to be harvested grants the person the authority to harvest the desert plant from that property.

(c) The department by rule shall establish a standard compliance agreement described by Subsection (a). The compliance agreement must state that a person who enters a compliance agreement under this section must comply with Section 122.003.

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

No equivalent provision.

121.005.

(d) A person must include with an application for registration under this section 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 plants from that property.

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

(1) show the source of the desert plants; and

(2) verify compliance with the compliance agreement conditions.

(c) The department shall 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.

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

Sec. 121.005. DOCUMENTATION PROVIDED UNDER COMPLIANCE AGREEMENT. (a) A person who sells or offers for sale a desert plant and has entered into a compliance agreement under this chapter shall, in accordance with department rules, provide a manifest or other form of documentation of the source of the desert plant to:

(1) a commercial purchaser;

(2) a person who sells or offers for sale the desert plant to a commercial purchaser; or

(3) a person who transports the desert plant for transfer out of this state.

(b) The manifest or other form of documentation must accompany the desert plant when the plant is:

(1) sold or offered for sale; or

Sec. 122.005. STOP-SALE ORDER. In enforcing this chapter, the department may 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 122.003. If an order is issued, a person may not sell the desert plant or shipment until proper documentation is provided.

Sec. 122.006. AUTHORITY TO SEIZE DESERT PLANTS. (a) In enforcing this chapter, the department with or without process may seize a desert plant or a shipment of desert plants that is:

(1) not accompanied by a manifest or other form of documentation required by Section 122.003; and

(2) intended for transfer out of this state.

(b) The department shall:

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

(2) if the department 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. 122.007. PENALTY. (a) 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 required by Section 122.003.

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

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

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

(3) both fine and imprisonment under this subsection.

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

(a) If a person violates a provision of law described by Subsection (c) or (c-1) or a rule or order adopted by the department under a provision of law described by

(2) transported for transfer out of this state.

Sec. 121.006. STOP-SALE ORDER. In enforcing this chapter, the department may 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 if required under Sections 121.004 and 121.005. If an order is issued, a person may not sell the desert plant or shipment until proper documentation is provided.

Sec. 121.007. AUTHORITY TO SEIZE DESERT PLANTS. (a) In enforcing this chapter, the department with or without process may seize a desert plant or a shipment of desert plants that is:

(1) not accompanied by a manifest or other form of documentation if required by Sections 121.004 and 121.005; and

(2) intended for transfer out of this state.

(b) The department shall:

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

(2) if the department 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. 121.008. PENALTY. (a) A person commits an offense if the person advertises, sells, or offers for sale to a commercial purchaser a desert plant or a shipment of desert plants that is not accompanied by a manifest or other form of documentation if required by Sections 121.004 and 121.005.

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

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

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

(3) both fine and imprisonment under this subsection.

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

(a) If a person violates a provision of law described by Subsection (c) or (c-1) or a rule or order adopted by the department under a provision of law described by

Subsection (c) or (c-1), the department may assess an administrative penalty against the person as provided by this section.

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

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

No equivalent provision.

SECTION 3. (a) Not later than December 1, 2013, the Department of Agriculture shall adopt rules to administer Chapter 122, Agriculture Code, as added by this Act.

(b) Chapter 122, Agriculture Code, as added by this Act, applies only to a **sale, an offer for sale, or the transportation of a desert plant** on or after January 1, 2014.

SECTION 4. This Act takes effect September 1, 2013.

Subsection (c) or (c-1), the department may assess an administrative penalty against the person as provided by this section.

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

(c-1) In addition to provisions described by Subsection (c), Chapter 121 is subject to this section and the applicable penalty amount is \$500.

(c-2) Subsection (c-1) does not authorize the department to assess an administrative penalty against a person described by Section 121.003(2).

SECTION 3. (a) Not later than December 1, 2013, the Department of Agriculture shall adopt rules to administer Chapter 121, Agriculture Code, as added by this Act.

(b) Chapter 121, Agriculture Code, as added by this Act, applies only to a **desert plant that is sold, offered for sale, or transported** on or after January 1, 2014.

SECTION 4. Same as introduced version.