

By: M. Gonzalez of El Paso

H.B. No. 1825

A BILL TO BE ENTITLED

AN ACT

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

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

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:

(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. The department shall
administer this chapter and adopt rules necessary for its
enforcement.

1 Sec. 122.003. REQUIREMENTS FOR SALE OR TRANSPORTATION. (a)

2 A person may not sell or offer for sale to a first purchaser a desert
3 plant or transport for transfer out of this state a desert plant
4 unless the person includes with the plant:

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

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

10 (3) verification that the harvest and sale of the
11 plant complies with a compliance agreement described by Section
12 122.004.

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

18 Sec. 122.004. REGISTRATION AND COMPLIANCE AGREEMENT. (a)

19 A person who grows or harvests a desert plant for sale or transport
20 out of this state must register with the department and enter into a
21 compliance agreement with the department describing the terms under
22 which a person may sell or transport the plant.

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

25 (1) a written statement that a desert plant provided
26 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 plant is to be harvested grants the
3 person the authority to harvest the desert plant from that
4 property.

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

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

11 Sec. 122.005. STOP-SALE ORDER. In enforcing this chapter,
12 the department may issue and enforce a written or printed order to
13 stop the sale of a desert plant or a shipment of desert plants that
14 is not accompanied by a manifest or other form of documentation as
15 provided by Section 122.003. If an order is issued, a person may
16 not sell the desert plant or shipment until proper documentation is
17 provided.

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

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

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

24 (b) The department shall:

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

27 (2) if the department is not able to identify the owner

1 of the land from which the desert plants were harvested, deliver
2 them to the Parks and Wildlife Department.

3 Sec. 122.007. PENALTY. (a) A person commits an offense if
4 the person advertises, sells, or offers for sale to a first
5 purchaser a desert plant or a shipment of desert plants that is not
6 accompanied by a manifest or other form of documentation as
7 required by Section 122.003.

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

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

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

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

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

15 (a) If a person violates a provision of law described by
16 Subsection (c) or (c-1) or a rule or order adopted by the department
17 under a provision of law described by Subsection (c) or (c-1), the
18 department may assess an administrative penalty against the person
19 as provided by this section.

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

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

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

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

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