

BILL ANALYSIS

C.S.H.B. 798
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Agriculture & Livestock
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the West Texas desert area is a prime target for the theft of desert plants due to current trends in home landscaping such as xeriscaping, which is a water conserving landscaping method. The parties report that thieves take desert plants in large numbers from public or private land without permission and sell the plants for profit throughout Texas and other states such as Arizona and California. The parties further note that the Chihuahuan Desert is one of the most biologically rich deserts in the world and contend that such theft presents a serious threat to the desert's delicate ecosystem. C.S.H.B. 798 seeks to address this issue by providing for a study of methods to prevent desert plant theft.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 798 amends the Agriculture Code to require the commissioner of agriculture, not later than December 1, 2015, to appoint a task force to study methods to prevent the theft of desert plants from private property, including the following genera of plants: Agave, Ariocarpus, Echinocactus, Echinocereus, Ferocactus, Fouquieria, Mammillaria, and Yucca. The bill requires the task force to study the sale and transportation of desert plants and methods to prevent the theft of desert plants from private property. The bill authorizes the task force to study the feasibility and effectiveness of implementing registration requirements for persons who sell or transport desert plants; requiring persons who sell or transport desert plants to enter into a compliance agreement with a state agency and to document the origin of the plants; authorizing a state agency to issue stop-sale orders regarding or to seize desert plants that do not comply with legal requirements; imposing civil, criminal, or administrative penalties for persons who steal desert plants and for persons who fail to comply with legal requirements governing the sale or transportation of desert plants; and taking any other action to regulate the sale or transportation of desert plants and prevent the theft of desert plants, as determined by the task force. The bill requires the task force, not later than December 1, 2016, to submit to the house committees on agriculture and livestock and appropriations a report that includes recommendations for legislation to regulate the sale or transportation of desert plants and prevent the theft of desert plants from private property. The bill's provisions expire December 31, 2016.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 798 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Title 5, Agriculture Code, is amended by adding Subtitle F to read as follows: <u>SUBTITLE F. PRODUCTION, PROCESSING, AND SALE OF NURSERY PRODUCTS</u> <u>CHAPTER 121. SALE OF DESERT PLANTS</u> <u>Sec. 121.001. DEFINITIONS. In this chapter:</u> <u>(1) "Commercial purchaser" means a person who purchases a plant for the purpose of wholesale or retail sale.</u> <u>(2) "Desert plant" means the following genera of plants:</u> <u>(A) Agave;</u> <u>(B) Ariocarpus;</u> <u>(C) Echinocactus;</u> <u>(D) Echinocereus;</u> <u>(E) Ferocactus;</u> <u>(F) Fouquieria;</u> <u>(G) Mammillaria; and</u> <u>(H) Yucca.</u> <u>Sec. 121.002. ADMINISTRATION. The department shall administer this chapter and adopt rules necessary for its enforcement.</u> <u>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:</u> <u>(1) complies with Sections 121.004 and 121.005 and department rules on providing documentation of the source of the desert plant; or</u> <u>(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.</u> <u>Sec. 121.004. REGISTRATION AND COMPLIANCE AGREEMENT. (a) A</u>	<u>No equivalent provision.</u>

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 121.005.

(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.

(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.

(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
(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.

No equivalent provision.

SECTION 1. Chapter 12, Agriculture Code, is amended by adding Section 12.052 to read as follows:

Sec. 12.052. STUDY OF METHODS TO PREVENT DESERT PLANT THEFT. (a) Not later than December 1, 2015, the commissioner shall appoint a task force to study methods to prevent the theft of desert plants from private property, including the following genera of plants:

(1) Agave;

(2) Ariocarpus;

(3) Echinocactus;

(4) Echinocereus;

(5) Ferocactus;

(6) Fouquieria;

(7) Mammillaria; and

(8) Yucca.

(b) The task force shall study the sale and transportation of desert plants and methods to prevent the theft of desert plants from private property. The task force may study the feasibility and effectiveness of:

(1) implementing registration requirements for persons who sell or transport desert plants;

(2) requiring persons who sell or transport desert plants to enter into a compliance agreement with a state agency;

(3) requiring persons who sell or transport desert plants to document the origin of the plants;

(4) authorizing a state agency to issue stop-sale orders regarding or to seize desert plants that do not comply with legal requirements;

(5) imposing civil, criminal, or administrative penalties for persons who steal desert plants and for persons who fail to comply with legal requirements governing the sale or transportation of desert plants; and

(6) taking any other action to regulate the sale or transportation of desert plants and prevent the theft of desert plants, as determined by the task force.

(c) Not later than December 1, 2016, the task force shall submit to the house committees on agriculture and livestock and appropriations a report that includes recommendations for legislation to regulate the sale or transportation of desert plants and prevent the theft of desert plants from private property.

(d) This section expires December 31, 2016.

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

No equivalent provision.

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, 2015, 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, 2016.

SECTION 4. This Act takes effect September 1, 2015.

No equivalent provision.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.