

BILL ANALYSIS

Senate Research Center
80R7329 JJT-D

S.B. 689
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The current trend in home landscaping toward xeriscaping, a water-conserving landscaping method, combined with tough Arizona laws regulating the desert plant trade, have made the West Texas desert area a prime target for illegal harvesting of cacti and other succulents. So-called "cactus rustlers" take desert plants from public land, or from private land without permission. The plants are then sold for profit in Texas and other states, especially Arizona and California. Some private landowners also harvest desert plants on their own land. The Chihuahuan Desert is one of the most biologically rich deserts in the world, home to almost a quarter of the 1,500 cactus species known to science, including many species found nowhere else. The removal of these plants in large number is seriously damaging to the delicate desert ecosystem. Removing too many of these crucial cacti and desert plant deprives desert dwellers, such as mountain lions, hummingbirds, woodpeckers, and bats, of food and shelter and disrupts the ecological balance of the area.

The United States ranks among the world's largest cactus producers and markets with the highest concentration of growers and harvester located in the Southwest. Between 1998 and June 2001, almost 100,000 succulents worth an estimated \$3 million were shipped from Texas to Arizona. These included both cacti harvested from the wild in Texas, and illegal imports from Mexico. Mexican authorities seized almost 800 cactus specimens from travelers entering or passing through the U.S. from Mexico in 1998. The trade taking place is massive, and it is likely that it will continue to grow; landscaping plants are in high demand and the demand for desert plants may soon surpass the desert's natural supply.

As proposed, S.B. 689 directs the Texas Department of Agriculture to administer and adopt rules necessary to enforce a system of inspections to ensure that each desert plant sold in or leaving Texas has been legally harvested.

RULEMAKING AUTHORITY

Rulemaking authority is expressly grant to the Texas Department of Agriculture in SECTION 1 (Section 122.002, Agriculture Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle F, Title 5, Agriculture Code, by adding Chapter 122, as follows:

CHAPTER 122. SALES OF DESERT PLANTS

Sec. 122.001. DEFINITION. Defines "desert plant."

Sec. 122.002. ADMINISTRATION. Requires the Texas Department of Agriculture (TDA) to administer this chapter and adopt rules necessary for its enforcement.

Sec. 122.003. REQUIREMENTS FOR SALE OR TRANSPORT. Prohibits a person from selling a desert plant (plant), offering the sale of the plant, or transporting the plant out of this state unless the plant is marked as provided by Section 122.005.

Sec. 122.004. REGISTRATION REQUIRED. (a) Requires a person who grows or harvests a plant for sale to register with TDA.

(b) Requires a person who is required to register with the TDA to include with the registration information, either a statement that the plants provided for sale will be harvested from the person's property or written documentation from the owner of the property from which the plants will be harvested granting the person selling of offering to sell the plants the authority to harvest the plants.

Sec. 122.005. MARKING OF DESERT PLANTS. (a) Requires a person subject to Section 122.004 to mark each plant harvested for sale under this chapter with an identification mark prescribed by TDA.

(b) Authorizes TDA to charge a fee for providing an identification mark under this section.

Sec. 122.006. STOP-SALE ORDER. Authorizes TDA to issue and enforce a written or printed order to stop the sale of a plant or a shipment of plants that is not marked as provided by Section 122.005. Prohibits the sale or shipment of the plant if an order is issued until the plant is properly marked.

Sec. 122.007. AUTHORITY TO SEIZE PLANTS. Authorizes TDA with or without process to seize a plant or a shipment of plants that is not marked and intended to be transported out of this state in enforcing this chapter.

Sec. 122.008. PENALTY. (a) Provides that a person commits an offense if the person advertises, sells, or offers for sale a plant or a shipment of plants that is not clearly and distinctly marked.

(b) Provides that the offense is punishable by a fine not to exceed \$1,000, imprisonment not to exceed 180 days, or both.

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

(a) Makes a conforming change.

(b) Makes a conforming change.

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

SECTION 3. Requires TDA to adopt rules to administer Chapter 122, Agriculture Code, as add by this Act, not later than December 1, 2007. Makes application of this Act prospective to January 1, 2008.

SECTION 4. Effective date: September 1, 2007.