

BILL ANALYSIS

Senate Research Center
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S.B. 212
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The current trend in home landscaping is xeriscaping, a water-conserving landscaping method. This trend, combined with tough Arizona laws regulating the desert plant trade, has made the West Texas desert area a prime target for 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 numbers is seriously damaging to the delicate desert ecosystem. Removing too many of these crucial cacti and desert plants deprive 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 harvesters are 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. 212 makes it illegal to sell or transport desert plants without appropriate documentation from Texas Department of Agriculture (TDA). S.B. 212 establishes requirements for the sale or transportation of desert plants, requires a person who grows or harvests a desert plant to register with TDA, and requires a person selling or transporting desert plants to have documentation prescribed by TDA certifying the sale or transport for each transaction. S.B. 212 also allows TDA to issue a stop-sale order to stop the sale or shipment of desert plants that are not accompanied by the documentation prescribed by TDA, and establishes penalties if a person advertises, sells, or ships undocumented desert plants.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Agriculture in SECTION 1 (Sec. 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. SALE OF DESERT PLANTS

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

Sec. 122.002. ADMINISTRATION. Requires the 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, unless documentation is provided as prescribed by Section 122.005, from selling a desert plant, offering a desert plant for sale, or transporting a desert plant out of this state.

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

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

Sec. 122.005. DOCUMENTATION FOR SALE OR TRANSPORT OF DESERT PLANTS. (a) Requires a person subject to Section 122.004 to provide documentation prescribed by TDA certifying the sale or transport for each transaction involving at least 25 desert plants harvested for sale under this chapter. Authorizes documentation provided under this subsection to certify no more than 25 desert plants. Requires a person, for a transaction involving more than 25 desert plants, to provide documentation for each grouping of 25 or fewer plants.

(b) Authorizes TDA to charge a fee for providing documentation under this section.

Sec. 122.006. STOP-SALE ORDER. Authorizes TDA, in enforcing this chapter, 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 documentation as provided by Section 122.005. Prohibits a person, if an order is issued, from selling the plant or shipment until proper documentation is provided.

Sec. 122.007. AUTHORITY TO SEIZE PLANTS. Authorizes TDA with or without process, in enforcing this chapter, to seize a desert plant or a shipment of desert plants that is not accompanied by documentation as provided by Section 122.005 and is intended for transfer out of this state.

Sec. 122.008. PENALTY. (a) Provides that a person commits an offense if the person advertises, sells, or offers for sale a desert plant or a shipment of desert plants that is not accompanied by documentation as provided by Section 122.005.

(b) Provides that an offense under this section is punishable by a fine not to exceed \$1,000, imprisonment for a term not to exceed 180 days, or both fine and imprisonment under this subsection.

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

(a) Provides that if a person violates a provision of this code described by Subsection (c) (relating to applicable penalty amounts to the provisions of this code) or (c-1) of this section or a rule or order adopted by TDA under a provision of this code described by Subsection (c) or (c-1) of this section, TDA is authorized to assess an administrative penalty against the person as provided by this section.

(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. (a) Requires TDA to adopt rules to administer Chapter 122, Agriculture Code, as added by this Act, not later than December 1, 2009.

(b) Makes application of Act prospective to January 1, 2010.

SECTION 4. Effective date: September 1, 2009.