

By: González

H.B. No. 798

A BILL TO BE ENTITLED

AN ACT

relating to the sale or transportation of certain desert plants;
creating an offense and providing penalties; providing authority to
impose a fee.

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 121. SALE OF DESERT PLANTS

Sec. 121.001. DEFINITIONS. In this chapter:

(1) "Commercial purchaser" means a person who
purchases a plant for the 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. The department shall
administer this chapter and adopt rules necessary for its

1 enforcement.

2 Sec. 121.003. REQUIREMENTS FOR SALE OR TRANSPORTATION. A
3 person may not sell or offer for sale to a commercial purchaser a
4 desert plant or transport for transfer out of this state a desert
5 plant unless the person:

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

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

13 Sec. 121.004. REGISTRATION AND COMPLIANCE AGREEMENT. (a)
14 A person who grows desert plants on or harvests desert plants from
15 property owned by another person for sale must register with the
16 department and enter into a compliance agreement with the
17 department that requires the person to provide a manifest or other
18 form of documentation during a sale or transfer in compliance with
19 Section 121.005.

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

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

25 (2) verify compliance with the compliance agreement
26 conditions.

27 (c) The department shall adopt rules, including procedures

1 for inspection or other mechanisms, to ensure that a manifest or
2 other form of documentation provided under a compliance agreement
3 does not misrepresent the source of a desert plant.

4 (d) A person must include with an application for
5 registration under this section written documentation that the
6 owner of the property from which the desert plants are to be
7 harvested grants the person the authority to harvest the plants
8 from that property.

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

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

16 (1) a commercial purchaser;

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

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

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

23 (1) sold or offered for sale; or

24 (2) transported for transfer out of this state.

25 Sec. 121.006. STOP-SALE ORDER. In enforcing this chapter,
26 the department may issue and enforce a written or printed order to
27 stop the sale of a desert plant or a shipment of desert plants that

1 is not accompanied by a manifest or other form of documentation if
2 required under Sections 121.004 and 121.005. If an order is issued,
3 a person may not sell the desert plant or shipment until proper
4 documentation is provided.

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

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

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

11 (b) The department shall:

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

14 (2) if the department is not able to identify the owner
15 of the land from which the desert plants were harvested, deliver
16 them to the Parks and Wildlife Department.

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

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

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

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

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

26 SECTION 2. Section [12.020](#), Agriculture Code, is amended by
27 amending Subsections (a) and (b) and adding Subsections (c-1) and

1 (c-2) to read as follows:

2 (a) If a person violates a provision of law described by
3 Subsection (c) or (c-1) or a rule or order adopted by the department
4 under a provision of law described by Subsection (c) or (c-1), the
5 department may assess an administrative penalty against the person
6 as provided by this section.

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

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

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

18 SECTION 3. (a) Not later than December 1, 2015, the
19 Department of Agriculture shall adopt rules to administer Chapter
20 121, Agriculture Code, as added by this Act.

21 (b) Chapter 121, Agriculture Code, as added by this Act,
22 applies only to a desert plant that is sold, offered for sale, or
23 transported on or after January 1, 2016.

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