

1-1 By: Shapleigh S.B. No. 970
1-2 (In the Senate - Filed March 6, 2003; March 13, 2003, read
1-3 first time and referred to Committee on Natural Resources;
1-4 May 2, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; May 2, 2003, sent
1-6 to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 970 By: Estes

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the sale or transport of certain desert plants;
1-11 providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle F, Title 5, Agriculture Code, is
1-14 amended by adding Chapter 122 to read as follows:

1-15 CHAPTER 122. SALE OF DESERT PLANTS

1-16 Sec. 122.001. DEFINITION. In this chapter, "desert plant"
1-17 means the following genera of plants:

- 1-18 (1) Agave;
- 1-19 (2) Ariocarpus;
- 1-20 (3) Echinocactus;
- 1-21 (4) Echinocereus;
- 1-22 (5) Ferocactus;
- 1-23 (6) Fouquieria;
- 1-24 (7) Mammillaria;
- 1-25 (8) Opuntia; and
- 1-26 (9) Yucca.

1-27 Sec. 122.002. ADMINISTRATION. The department shall
1-28 administer this chapter and adopt rules necessary for its
1-29 enforcement.

1-30 Sec. 122.003. REQUIREMENTS FOR SALE OR TRANSPORT. Unless a
1-31 desert plant is marked as provided by Section 122.005, a person may
1-32 not:

- 1-33 (1) sell the plant;
- 1-34 (2) offer the plant for sale; or
- 1-35 (3) transport the plant out of this state.

1-36 Sec. 122.004. REGISTRATION REQUIRED. (a) A person who
1-37 grows or harvests a desert plant for sale must register with the
1-38 department.

1-39 (b) A person described by Subsection (a) must include the
1-40 following with the registration information provided to the
1-41 department:

1-42 (1) a statement that the desert plants provided for
1-43 sale will be harvested from the person's property; or
1-44 (2) written documentation from the owner of the
1-45 property from which the desert plants will be harvested granting
1-46 the person selling or offering to sell the plants the authority to
1-47 harvest the plants.

1-48 Sec. 122.005. MARKING OF DESERT PLANTS. (a) A person
1-49 subject to Section 122.004 shall mark each desert plant harvested
1-50 for sale under this chapter with an identification mark prescribed
1-51 by the department.

1-52 (b) The department may charge a fee for providing an
1-53 identification mark under this section.

1-54 Sec. 122.006. STOP-SALE ORDER. In enforcing this chapter,
1-55 the department may issue and enforce a written or printed order to
1-56 stop the sale of a desert plant or a shipment of desert plants that
1-57 is not marked as provided by Section 122.005. If an order is
1-58 issued, a person may not sell the plant or shipment until it has
1-59 been properly marked.

1-60 Sec. 122.007. AUTHORITY TO SEIZE PLANTS. In enforcing this
1-61 chapter, the department with or without process may seize a desert
1-62 plant or a shipment of desert plants that is:

- 1-63 (1) not marked as provided by Section 122.005; and

(2) intended for transfer out of this state.

Sec. 122.008. PENALTY. (a) 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 clearly and distinctly marked as provided by Section 122.005.

(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.

2-10 SECTION 2. Section 12.020, Agriculture Code, is amended by
2-11 amending Subsections (a) and (b) and adding Subsection (c-1) to
2-12 read as follows:

2-13 (a) If a person violates a provision of this code described
2-14 by Subsection (c) or (c-1) of this section or a rule or order
2-15 adopted by the department under a provision of this code described
2-16 by Subsection (c) or (c-1) of this section, the department may
2-17 assess an administrative penalty against the person as provided by
2-18 this section.

2-19 (b) The penalty for each violation may be in an amount not to
2-20 exceed the maximum provided by Subsection (c) or (c-1) of this
2-21 section. Each day a violation continues or occurs may be considered
2-22 a separate violation for purposes of penalty assessments.

2-23 (c-1) In addition to provisions described by Subsection
2-24 (c), Chapter 122 is subject to this section and the applicable
2-25 penalty amount is \$500.

2-26 SECTION 3. Not later than December 1, 2003, the Department
2-27 of Agriculture shall adopt rules to administer Chapter 122,
2-28 Agriculture Code, as added by this Act.
2-29 SECTION 4. This Act takes effect January 1, 2004.

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