

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 710

By: Justice of the Senate

3 and

4 Hickman of the House

5
6
7
8 (agriculture - horticulture regulation - expanding
9 authority -

10 effective date)

11
12 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

13
14 "An Act relating to agriculture; amending 2 O.S.
15 2001, Section 3-32.1, which relates to horticulture
regulation; modifying definitions; amending 2 O.S.
16 2001, Section 3-32.2, which relates to inspections;
expanding authority of the Department of
17 Agriculture, Food, and Forestry; amending 2 O.S.
2001, Section 3-32.8, which relates to violations;
18 expanding violations to include falsifying certain
information; amending 2 O.S. 2001, Section 3-81, as
19 amended by Section 1, Chapter 383, O.S.L. 2002 (2
O.S. Supp. 2006, Section 3-81), which relates to
pesticides; clarifying certain definition; amending
20 2 O.S. 2001, Section 14-38, which relates to
unlawful misrepresentation; clarifying certain
21 unlawful act; creating the Common Sense Consumption
Act; providing short title; stating legislative
22 intent; defining terms; providing immunity from
civil liability for certain claims; providing
23 exception; providing pleading requirements;
providing for stay of discovery and other
24 proceedings in certain circumstances; providing

1 scope of claims covered; providing for codification;
2 and providing an effective date.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. AMENDATORY 2 O.S. 2001, Section 3-32.1, is
6 amended to read as follows:

7 Section 3-32.1 As used in this subarticle:

8 1. "Broker" means any person who negotiates the purchase or
9 sale of any nursery stock. A broker may or may not handle ~~either~~
10 the nursery stock ~~which is involved~~ or the proceeds of a sale;

11 2. "Certificate" means a document authorized or prepared by a
12 duly authorized federal or state regulatory official that affirms,
13 declares, or verifies that an article, nursery stock, plant,
14 product, shipment, or any other officially regulated items meet
15 phytosanitary, quarantine, nursery inspection, pest freedom, plant
16 registration or certification, or any other set of legal
17 requirements;

18 3. "Compliance agreement" means any written document between a
19 person and the State Oklahoma Department of Agriculture, Food, and
20 Forestry or the United States Department of Agriculture to achieve
21 compliance with any set of requirements being enforced by the
22 Department;

1 4. "Cultivar" means a horticulturally, silviculturally, or
2 agriculturally derived cultivated variety of a plant, as
3 distinguished from a natural variety;

4 5. "Dealer" means any person who sells, brokers, or distributes
5 nursery stock that was not grown from seeds, cuttings, liners, or
6 similar propagative material by ~~the~~ that person but ~~which~~ was
7 bought, received on consignment, or acquired and in the person's
8 possession for the purposes of resale;

9 ~~6. "Dangerously injurious plant pest" means a plant pest that~~
10 ~~constitutes a significant threat to the agricultural, silvicultural,~~
11 ~~or horticultural interests of this state, or the state's general~~
12 ~~environmental quality as determined by the State Board of~~
13 ~~Agriculture;~~

14 ~~7.~~ "Facilities" means and includes all buildings, greenhouses,
15 storage places, cellars, pits, trenches, bins, containers, packing
16 materials, crates, packing rooms, display bins, refrigerators, ice
17 boxes, and any other structures and materials used in storing,
18 transporting, and distributing nursery stock. The nursery, dealer,
19 or agent shall maintain the facilities as are necessary for the
20 proper care and conservation of nursery stock;

21 7. "Grower" means any person who raises, grows, or propagates
22 for profit or other reasons any nursery stock or plant;

23 8. "Heel yard" means any plant holding area;
24

1 9. "Horticulture" means the discipline of agriculture science
2 relating to the cultivation of gardens or orchards, including, but
3 not limited to the growing of vegetables, flowers, and ornamental
4 trees and shrubs;

5 ~~9.~~ 10. "Landscape" means a person who purchases nursery stock
6 and offers that stock for sale or planting through landscape
7 services and typically does not hold and maintain plants in a heel
8 yard or nursery;

9 11. "Native species" means a species that, other than due to an
10 introduction, historically occurred or currently occurs in that
11 ecosystem;

12 ~~10.~~ 12. "Nursery" means and includes any field, ground,
13 greenhouse, bin, pit, plot, or premise where nursery or floral stock
14 is grown, propagated, or sold;

15 ~~11.~~ 13. "Nursery operator" means the person who owns, leases,
16 manages, or is in control of a nursery, and ~~is further defined as~~
17 any person who is a grower of nursery stock;

18 ~~12.~~ 14. "Nursery stock" means and includes, whether in field or
19 container, all trees, shrubs, vines, rosebushes, turfgrass,
20 cuttings, grafts, scions, fruit pits, herbaceous plants, evergreens
21 and other ornamental trees, bushes, collected wild plants and trees,
22 decorative plants, tropical plants, flowering plants, bedding
23 plants, vegetable plants for transplanting, aquatic plants, roots,
24 corms, rhizomes, bulbs, and ferns grown for propagation, all packing

1 materials, and other things used in the handling, storing, crating,
2 and shipping of nursery stock. "Nursery stock" does not include cut
3 Christmas trees, wreaths, seeds, vegetables or fruits, agronomic
4 crops, cut or dried flowers, and cut or dried herbs;

5 ~~13.~~ "Pest" means any living agent that is known to cause damage
6 ~~or harm to agriculture or the environment;~~

7 ~~14.~~ 15. "Phytopsanitary certificate" means a document issued by
8 the ~~State Board of Agriculture~~ Department indicating that the
9 specified live plants or plant products comply with the legal
10 requirements of the importing state or country. The document may be
11 either a State Phytopsanitary Certificate or Federal Phytopsanitary
12 Certificate;

13 ~~15.~~ 16. "Place of business" means each separate store, stand,
14 sales lot, or any other place at or from which nursery stock is
15 being sold or offered for sale;

16 17. "Plant pest" means any pest ~~of~~ known to cause damage or
17 harm to plants, agricultural commodities, horticultural products,
18 nursery stock, silvicultural interests, or ~~non-cultivated plants~~ the
19 environment. Plant pest includes, but is not limited to, insects,
20 snails, nematodes, fungi, viruses, bacterium, microorganisms,
21 mycoplasma-like organisms, weeds, plants, or other parasitic higher
22 plants;

23 ~~16.~~ 18. "Sales location" means any principal business location
24 where nursery stock is sold directly to a customer;

1 ~~17.~~ 19. "Sell" means to offer for sale, expose for sale,
2 possess for sale, exchange, barter, or trade;

3 ~~18.~~ "~~Seasonal sales operations~~" means ~~business operations~~
4 ~~engaged in the nursery business for not more than a total of one~~
5 ~~hundred eighty days (180) in a calendar year;~~

6 ~~19.~~ 20. "Silviculture" means the development and care of
7 forests;

8 ~~20.~~ 21. "Stop sale" means a legal document issued by the State
9 Board of Agriculture that prevents the production of or sale of
10 nursery stock due to an infestation of a ~~dangerously injurious~~ plant
11 pest; and

12 ~~21.~~ 22. "Turfgrass sod" means a strip or section of one or more
13 grasses or other plants acceptable for lawn plantings which, when
14 severed from its growing site, contains sufficient plant roots to
15 remain intact, and does not contain weeds in excess of the amount
16 specified by the Board;

17 ~~22.~~ "~~Vegetable plant~~" means ~~any plant grown from seed or other~~
18 ~~vegetative parts and sold as a transplant for the purpose of food~~
19 ~~production.~~

20 SECTION 2. AMENDATORY 2 O.S. 2001, Section 3-32.2, is
21 amended to read as follows:

22 Section 3-32.2 ~~Authorized agents of the State Board~~ A. 1. The
23 Oklahoma Department of Agriculture, Food, and Forestry shall have
24 the authority to inspect any orchard, fruit, or garden, park,

1 cemetery, private premises, public place, or any place ~~which~~ that
2 may be infested with a plant pest that may be a threat to plants
3 belonging to other property owners or the health or safety of the
4 general public.

5 2. The Department may inspect any nursery stock, shipping
6 documents, treatment records, sales records, or other relevant
7 documents of any person, whether licensed with the Department or
8 not, to determine the distribution of nursery stock.

9 3. The Department may take samples removed of nursery stock in
10 order to determine compliance with this subarticle. If the
11 Department finds that the samples are not in compliance with this
12 subarticle, the Department's finding shall be considered prima facie
13 evidence that a violation has occurred.

14 B. The Department shall have the authority to issue notices of
15 violation, citations, compliance orders, conditional orders, stop
16 sales orders, stop work orders, quarantines, or any other order
17 authorized pursuant to the Oklahoma Agricultural Code.

18 C. Any nursery stock distributed, sold, or offered for sale
19 within this state or delivered for transportation or transported in
20 intrastate or interstate commerce may be seized or caused to be
21 destroyed by the Department in any county of the state where it may
22 be found if:

23

24

1 1. The nursery stock is devitalized or infested with a plant
2 pest and may become a threat to plants belonging to other persons or
3 the health, safety, or welfare of the general public; or

4 2. The nursery stock does not bear the proper certificate,
5 plant tag information, or the required inspection or shipping
6 information.

7 D. The Board, after notice and opportunity for a hearing as
8 provided in the Administrative Procedures Act, Department shall also
9 have the authority to order the owner, occupant, or person in charge
10 to take any necessary action including, but not limited to, the
11 proper treatment or destruction of infested or diseased plants
12 pursuant to the Oklahoma Agricultural Code and the Administrative
13 Procedures Act.

14 E. For the purpose of securing uniformity of rules, no city,
15 town, county, or other political subdivision of this state shall
16 adopt or continue in effect any ordinance, rule, regulation, or
17 statute regarding nursery stock sales or distribution that is more
18 stringent than the rules of the State Board of Agriculture.

19 SECTION 3. AMENDATORY 2 O.S. 2001, Section 3-32.8, is
20 amended to read as follows:

21 Section 3-32.8 It shall be unlawful for any person to knowingly
22 or willfully violate any of the provisions of this subarticle or any
23 rules of the State Board of Agriculture by:

- 1 1. Misrepresenting to another their connection with a nursery,
2 or to:
- 3 a. misrepresent the grade, character, variety, or quality
4 of any nursery stock,
5 b. make a false declaration of acreage,
6 c. conceal any nursery stock from inspection, or
7 d. offer for sale nursery stock which is seriously or
8 substantially devitalized;
- 9 2. Failing to furnish the ~~Board~~ Oklahoma Department of
10 Agriculture, Food, and Forestry with true and exact copies of order
11 forms, contracts, and agreements with customers;
- 12 3. Failing to furnish each purchaser, upon request, a true and
13 correct invoice of each purchase, stating the variety, quality, age,
14 or size of the stock to which the invoice applies;
- 15 4. Selling, offering for sale, or distributing any nursery
16 stock infected or infested with a plant pest;
- 17 5. Selling, offering for sale, or distributing nursery stock
18 that is not healthy, sound, and capable of growth;
- 19 6. Failing to carry out treatment or destruction of nursery
20 stock as ordered by the Board;
- 21 7. Misrepresenting or falsifying information on a license
22 application;
- 23 8. Doing business without a valid license;
- 24

- 1 9. Allowing a license to be used by any person other than the
2 person to whom it was issued;
- 3 10. Failing to notify the Board of the legal description of all
4 growing locations of nursery stock or sod;
- 5 11. Failing to allow an authorized agent to complete an
6 inspection or collect adequate samples;
- 7 12. Selling nursery stock restricted by a stop sale order;
- 8 13. Selling, moving, or distributing nursery stock or other
9 material under a quarantine;
- 10 14. Mislabeled nursery stock by using the wrong common name or
11 botanical name;
- 12 15. Transporting any regulated article into the state from a
13 quarantined area of any other state or country when the article has
14 not been treated or handled as provided by the requirements of the
15 quarantine;
- 16 16. Interfering with, hindering, or impeding, by any method,
17 any authorized agent of the Board in the performance of duties; ~~or~~
- 18 17. Falsifying or using false information to ship nursery stock
19 out of Oklahoma into any other state in the United States or any
20 country outside of the United States or making a false statement
21 regarding the condition, quality, grade, character, variety, or
22 treatment used; or
- 23 18. Failing to comply with any order of the Board.
24

1 SECTION 4. AMENDATORY 2 O.S. 2001, Section 3-81, as
2 amended by Section 1, Chapter 383, O.S.L. 2002 (2 O.S. Supp. 2006,
3 Section 3-81), is amended to read as follows:

4 Section 3-81. As used in this subarticle:

5 1. "Aircraft" means any contrivance used or designed for
6 navigation of or flight in the air over land or water and is
7 designed for or adaptable for use in applying pesticides as sprays,
8 dusts, or other forms;

9 2. "Active ingredient" means an ingredient, which defoliates
10 plants, prevents fruit drop, inhibits sprouting, or destroys,
11 repels, or mitigates insects, fungi, bacteria, rodents, weeds, or
12 other pests;

13 3. "Adulterated" means and includes any pesticide if the
14 pesticide strength or purity falls below the professed standard of
15 quality as expressed on labeling or under which it is sold, or if
16 any substance has been substituted wholly or in part for the
17 components of the pesticide, or if any valuable constituent of the
18 components of the pesticide has been wholly or in part abstracted;

19 4. "Antidote" means the most practical immediate treatment in
20 case of poisoning and includes but is not limited to first aid
21 treatment;

22 5. "Business location" means any place, site, or facility
23 maintained by a commercial or noncommercial applicator where
24 records, including but not limited to, financial statements,

1 payroll, insurance, and personnel documents are maintained,
2 pesticides are stored, or customers are served. A location serving
3 strictly as a telephone answering service shall not be considered a
4 business location;

5 6. "Certificate" means a written document issued to an
6 individual by the State Board of Agriculture which indicates that
7 the individual has met the certification standards established by
8 this subarticle for the category of pesticide application shown on
9 the certificate. A certificate does not allow a person to do work
10 as a commercial, noncommercial, service technician, or private
11 applicator unless employed by a licensed entity or has a valid
12 license issued by the Board;

13 7. "Certification standards" means the standards that a person
14 shall meet to become a certified applicator;

15 8. "Certified applicator" means a person who has met the
16 certification standards;

17 9. "Commercial application" means the advertising of services,
18 recommendation for use, the preparation for application, and the
19 physical act of applying a pesticide or employment of a device for
20 hire or compensation;

21 10. "Commercial applicator" means any person engaging in the
22 commercial application of pesticides or commercial employment of
23 devices. Any farmer while working for a neighbor in agricultural
24 production, not advertising, and not held out to be in the business

1 of applying ~~restricted use of~~ restricted-use pesticides, shall not
2 be classified by the Board as a commercial applicator;

3 11. "Contract" means a binding, written agreement between two
4 or more persons spelling out terms and conditions and includes, but
5 is not limited to, warranties or guarantees for pesticide
6 application. For structural pest control applications, the contract
7 shall also include a statement, plat, or diagram showing all
8 locations of visible termites and termite damaged materials which
9 are observed, and how the application was performed;

10 12. "Defoliant" means any pesticide intended to cause the
11 leaves or foliage to drop from a plant, with or without causing
12 abscission;

13 13. "Desiccant" means any pesticide intended to artificially
14 accelerate the drying of plant tissues;

15 14. "Device" means any instrument subject to the United States
16 Environmental Protection Agency regulation intended for trapping,
17 destroying, repelling, or mitigating insects or rodents, or
18 mitigating fungi, bacteria, or weeds, or other pests designated by
19 the Board, but not including equipment used for the application of
20 pesticides when sold separately;

21 15. "Direct supervision" means that the certified applicator is
22 responsible for assuring that persons working, subject to direct
23 supervision, are qualified to handle pesticides and are instructed
24 in the application of the specific pesticides used in each

1 particular application conducted which is subject to their
2 supervision. Certified applicators shall be accessible to the
3 noncertified applicator at all times during the application of the
4 pesticide by telephone, radio, or any device approved by the Board;

5 16. "Fungi" means all nonchlorophyll-bearing thallophytes,
6 including, but not limited to, rusts, smuts, mildews, molds, yeasts,
7 and bacteria, except those on humans or animals;

8 17. "Fungicide" means any pesticide intended for preventing,
9 destroying, repelling, or mitigating any fungi or bacteria;

10 18. "Ground equipment" means any machine, equipment, or device
11 other than aircraft designed for use, adaptable for use, or used on
12 land or water in applying pesticides as sprays, dusts, aerosols,
13 fogs, or other forms;

14 19. "Herbicide" means any pesticide intended for preventing,
15 destroying, repelling, desiccating, or mitigating any weed, or for
16 defoliating plants, preventing fruitdrop, and inhibiting sprouting;

17 20. "Inert ingredient" means an ingredient, which is not an
18 active ingredient;

19 21. "Ingredient statement" means a statement containing the
20 name and percentage of each active ingredient, and the total
21 percentage of all inert ingredients in the pesticide. If the
22 pesticide contains arsenic in any form, the percentages of total and
23 water-soluble arsenic shall each be calculated as elemental arsenic;

24

1 22. "Insect" means any of the numerous small invertebrate six-
2 legged animals generally having the body more or less obviously
3 segmented, many belonging to the class Insecta, including, but not
4 limited to, beetles, bugs, and flies as well as allied classes of
5 arthropods including spiders, mites, ticks, centipedes, and wood
6 lice;

7 23. "Insecticide" means any pesticide intended for preventing,
8 destroying, repelling, or mitigating any insects which may be
9 present in any environment;

10 24. "Label" means the written, printed, or graphic matter
11 attached to the pesticide, device, or container including the
12 outside container or wrapper of the retail package of the pesticide
13 or device;

14 25. "Labeling" means all labels and other written, printed, or
15 graphic material:

- 16 a. upon the pesticide, device, or any of its containers
- 17 or wrappers,
- 18 b. accompanying the pesticide or device at any time, or
- 19 c. to which reference is made on the label or in
- 20 literature accompanying the pesticide or device except
- 21 when accurate, nonmisleading reference is made to
- 22 current official publications of the United States
- 23 Environmental Protection Agency, United States
- 24 Department of Agriculture, United States Department of

1 the Interior, the United States Public Health Service,
2 State Experiment Stations, State Agricultural
3 Colleges, or other federal institutions or official
4 agencies of this state or other states authorized by
5 law to conduct research in the field of pesticides;

6 26. "License" means a written document issued to a person by
7 the Board which shows that the person has met all established
8 licensing requirements established by this subarticle and who is
9 authorized to apply pesticides as a commercial, noncommercial, or
10 private applicator pursuant to the license issued;

11 27. "Minimum standards" means the measures prescribed by the
12 Board to bring appropriate pesticide services to the public;

13 28. "Misbranded" means and includes:

- 14 a. any pesticide or device if its labeling bears any
15 statement, design, or graphic representation relative
16 to its ingredients which is false or misleading, or
17 b. any pesticide or device:

18 (1) if it is an imitation of or is offered for sale
19 under the name of another pesticide or device,

20 (2) if its labeling bears any reference to
21 registration under this subarticle,

22 (3) if the labeling accompanying it does not contain
23 instructions for use which are necessary and, if
24

1 complied with, adequate for the protection of the
2 public,

3 (4) if the label does not contain a warning or
4 caution statement which may be necessary and, if
5 complied with, adequate to prevent injury to
6 humans and vertebrate animals,

7 (5) if the label does not bear an ingredient
8 statement on that part of the immediate container
9 and on the outside container or wrapper, if there
10 is one, through which the ingredient statement on
11 the immediate container cannot be clearly read,
12 of the retail package which is presented or
13 displayed under customary conditions of purchase,

14 (6) if any word, statement, or other information
15 required by or under the authority of this
16 subarticle to appear on the labeling is not
17 prominently placed with conspicuousness, as
18 compared with other words, statements, designees,
19 or graphic matter in the labeling, and in terms
20 likely to be read and understood by an individual
21 under customary conditions of purchase and use,
22 or

23 (7) if in the case of an insecticide, fungicide, or
24 herbicide, when used as directed or in accordance

1 with commonly recognized practice, it shall be
2 injurious to humans, vertebrate animals, or
3 vegetation, except weeds, to which it is applied,
4 or to the person applying the pesticide;

5 29. "Noncommercial applicator" means any person, other than a
6 commercial or private applicator, who uses or supervises the use of
7 a restricted-use pesticide. The noncommercial applicator shall be
8 under the supervision of an owner or manager of property and who is
9 certified in the same manner as a commercial applicator. A
10 noncommercial applicator is subject to all requirements except those
11 pertaining to financial responsibility. Noncommercial applicator
12 includes a government employee applying restricted-use pesticides in
13 the discharge of official duties;

14 30. "Nonrestricted-use pesticide" means any pesticide, other
15 than a pesticide classified as restricted-use pesticide;

16 31. "Nonrestricted-use pesticide dealer" means any person
17 engaged in the sale, storage, or distribution of any pesticide other
18 than those pesticides classified by the United States Environmental
19 Protection Agency or the Board as restricted-use pesticides;

20 32. "Permit" means a written document issued by the Board which
21 shows that a person has met all of the permitting requirements
22 established by this subarticle and is authorized to sell pesticides
23 as a restricted-use or ~~non-restricted~~ nonrestricted-use pesticide
24 dealer in accordance with the type of permit issued;

1 33. "Pest" means any organism harmful to man including, but not
2 limited to, insects, mites, nematodes, weeds, and pathogenic
3 organisms. Pathogenic organisms include viruses, mycoplasma,
4 bacteria, rickettsia, and fungi which the Board declares to be a
5 pest;

6 34. "Pesticide" means a substance or mixture of substances
7 intended for defoliating or desiccating plants, preventing
8 fruitdrop, inhibiting sprouting, or for preventing, destroying,
9 repelling, or mitigating any insects, rodents, fungi, bacteria,
10 weeds, or other forms of plant or animal life or viruses, which the
11 Board declares to be a pest, except viruses on or in humans or
12 animals;

13 35. "Private applicator" means any person who uses or
14 supervises the use of any restricted pesticide for purposes of
15 producing any agricultural commodity on property owned or rented by
16 the person, or employer, or on the property of another person if
17 applied without compensation other than trading of personal services
18 between producers of agricultural commodities;

19 36. "Registrant" means the person registering any pesticide or
20 device pursuant to the provisions of this subarticle;

21 37. "Restricted-use pesticide" means any pesticide classified
22 for restricted use by the United States Environmental Protection
23 Agency, either by regulation or through the registration process, or
24 by the Board pursuant to the Oklahoma Agricultural Code;

1 38. "Restricted_use pesticide dealer" means any person engaged
2 in the sale, storage, or distribution of restricted_use pesticides;

3 39. "Rodenticide" means any pesticide intended for preventing,
4 destroying, repelling, or mitigating rodents or any other animal
5 which the Board declares a pest;

6 40. "Service technician" means a person employed by a licensed
7 commercial or noncommercial applicator who applies the pesticide or
8 employs a device, but is not a certified applicator. A service
9 technician or certified applicator shall be present at each
10 application performed;

11 41. "Temporary certified applicator" means a person who has
12 successfully completed the written examinations required for
13 certification but has not successfully completed the practical
14 examination;

15 42. "Use" means transportation, storage, mixing, application,
16 safe handling, waste and container disposal, and other specific
17 instructions contained on the label and labeling;

18 43. "Weed" means any plant or plant part which grows where not
19 wanted; and

20 44. "Wood infestation report" means a document issued with a
21 property transaction which shall, at a minimum, contain statements
22 or certifications as to the presence or absence of termites and any
23 other wood destroying ~~organism~~ insects, and the presence or absence
24

1 of damage. The wood infestation report does not include a bid or
2 proposal for treatment.

3 SECTION 5. AMENDATORY 2 O.S. 2001, Section 14-38, is
4 amended to read as follows:

5 Section 14-38. It shall be unlawful for any person to:

6 1. Sell, offer, or expose for sale any item for less than the
7 quantity represented or take more than the represented quantity when
8 the buyer furnishes the weight or measure which determines the
9 quantity; or

10 2. ~~Represent~~ Misrepresent the price or quantity of any
11 commodity or service sold, offered, exposed, or advertised for sale
12 by weight, measure, or count in any manner ~~calculated or intended to~~
13 ~~mislead or deceive a person.~~

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 33 of Title 76, unless there is
16 created a duplication in numbering, reads as follows:

17 Sections 6 through 9 of this act shall be known and may be cited
18 as the "Common Sense Consumption Act".

19 SECTION 7. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 34 of Title 76, unless there is
21 created a duplication in numbering, reads as follows:

22 The intent of the Common Sense Consumption Act is to prevent
23 frivolous lawsuits against manufacturers, packers, distributors,
24 carriers, holders, sellers, marketers or advertisers of food

1 products that comply with applicable statutory and regulatory
2 requirements.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 35 of Title 76, unless there is
5 created a duplication in numbering, reads as follows:

6 As used in the Common Sense Consumption Act:

7 1. "Claim" means any claim by or on behalf of a natural person,
8 as well as any derivative or other claim arising therefrom asserted
9 by or on behalf of any other individual, corporation, company,
10 association, firm, partnership, society, joint-stock company, or any
11 other entity, including any governmental entity or governmental
12 officer, or private attorney;

13 2. "Generally known condition allegedly caused by or allegedly
14 likely to result from long-term consumption" means a condition
15 generally known to result or to likely result from the cumulative
16 effect of consumption, and not from a single instance of
17 consumption; and

18 3. "Knowing and willful" violation means that:

19 a. the conduct constituting the violation was committed
20 with the intent to deceive or injure consumers or with
21 actual knowledge that such conduct was injurious to
22 consumers, and

23 b. the conduct constituting the violation was not
24 required by regulations, orders, rules or other

1 pronouncement of, or any statute administered by, a
2 federal, state, or local government agency.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 36 of Title 76, unless there is
5 created a duplication in numbering, reads as follows:

6 A. Except as provided in subsection B of this section, a
7 manufacturer, packer, distributor, carrier, holder, seller, marketer
8 or advertiser of a food, as defined in Section 201(f) of the Federal
9 Food, Drug and Cosmetic Act (21 U.S.C. 321(f)), or an association of
10 one or more such entities, shall not be subject to civil liability
11 arising under any law of this state, including all statutes,
12 regulations, rules, common law, public policies, court or
13 administrative decisions or decrees, or other state action having
14 the effect of law, for any claim arising out of weight gain,
15 obesity, a health condition associated with weight gain or obesity,
16 or other generally known condition allegedly caused by or allegedly
17 likely to result from long-term consumption of food.

18 B. Subsection A of this section shall not preclude civil
19 liability if the claim of weight gain, obesity, health condition
20 associated with weight gain or obesity, or other generally known
21 condition allegedly caused by or allegedly likely to result from
22 long-term consumption of food is based on:

23 1. A material violation of an adulteration or misbranding
24 requirement prescribed by statute or regulation of this state or the

1 United States of America and the claimed injury was proximately
2 caused by such violation; or

3 2. Any other material violation of federal or state law
4 applicable to the manufacturing, marketing, distribution,
5 advertising, labeling, or sale of food, provided that such violation
6 is knowing and willful, and the claimed injury was proximately
7 caused by such violation.

8 C. In any action exempted under paragraph 1 of subsection B of
9 this section, the complaint initiating such action shall state with
10 particularity the following: the statute, regulation or other law
11 of this state or of the United States that was allegedly violated;
12 the facts that are alleged to constitute a material violation of
13 such statute or regulation; and the facts alleged to demonstrate
14 that such violation proximately caused actual injury to the
15 plaintiff. In any action exempted under paragraph 2 of subsection B
16 of this section, in addition to the foregoing pleading requirements,
17 the complaint initiating such action shall state with particularity
18 facts sufficient to support a reasonable inference that the
19 violation was with intent to deceive or injure consumers or with the
20 actual knowledge that such violation was injurious to consumers.
21 For purposes of applying the Common Sense Consumption Act, the
22 foregoing pleading requirements are hereby deemed part of the
23 substantive law of this state and not merely in the nature of
24 procedural provisions.

1 D. In any action exempted under subsection B of this section,
2 all discovery and other proceedings shall be stayed during the
3 pendency of any motion to dismiss unless the court finds upon the
4 motion of any party that particularized discovery is necessary to
5 preserve evidence or to prevent undue prejudice to that party.
6 During the pendency of any stay of discovery pursuant to this
7 subsection, unless otherwise ordered by the court, any party to the
8 action with actual notice of the allegations contained in the
9 complaint shall treat all documents, data compilations, including
10 electronically recorded or stored data, and tangible objects that
11 are in the custody or control of such party and that are relevant to
12 the allegations, as if they were the subject of a continuing request
13 for production of documents from an opposing party under Section
14 3234 of Title 12 of the Oklahoma Statutes.

15 E. The provisions of the Common Sense Consumption Act shall
16 apply to all covered claims pending on November 1, 2007, and all
17 claims filed thereafter.

18 SECTION 10. This act shall become effective November 1, 2007."
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1 Passed the House of Representatives the 19th day of April, 2007.

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3
4 Presiding Officer of the House of
Representatives

5
6 Passed the Senate the ____ day of _____, 2007.

7
8
9 Presiding Officer of the Senate