

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 710

By: Justice of the Senate

and

Hickman of the House

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7
8
9 COMMITTEE SUBSTITUTE

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

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

4 Section 3-32.1 As used in this subarticle:

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

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

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

20 4. "Cultivar" means a horticulturally, silviculturally, or
21 agriculturally derived cultivated variety of a plant, as
22 distinguished from a natural variety;

23 5. "Dealer" means any person who sells, brokers, or distributes
24 nursery stock that was not grown from seeds, cuttings, liners, or

1 similar propagative material by ~~the~~ that person but ~~which~~ was
2 bought, received on consignment, or acquired and in the person's
3 possession for the purposes of resale;

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

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

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

18 8. "Heel yard" means any plant holding area;

19 9. "Horticulture" means the discipline of agriculture science
20 relating to the cultivation of gardens or orchards, including, but
21 not limited to the growing of vegetables, flowers, and ornamental
22 trees and shrubs;

23 ~~9.~~ 10. "Landscape" means a person who purchases nursery stock
24 and offers that stock for sale or planting through landscape

1 services and typically does not hold and maintain plants in a heel
2 yard or nursery;

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

6 ~~10.~~ 12. "Nursery" means and includes any field, ground,
7 greenhouse, bin, pit, plot, or premise where nursery or floral stock
8 is grown, propagated, or sold;

9 ~~11.~~ 13. "Nursery operator" means the person who owns, leases,
10 manages, or is in control of a nursery, and ~~is further defined as~~
11 any person who is a grower of nursery stock;

12 ~~12.~~ 14. "Nursery stock" means and includes, whether in field or
13 container, all trees, shrubs, vines, rosebushes, turfgrass,
14 cuttings, grafts, scions, fruit pits, herbaceous plants, evergreens
15 and other ornamental trees, bushes, collected wild plants and trees,
16 decorative plants, tropical plants, flowering plants, bedding
17 plants, vegetable plants for transplanting, aquatic plants, roots,
18 corms, rhizomes, bulbs, and ferns grown for propagation, all packing
19 materials, and other things used in the handling, storing, crating,
20 and shipping of nursery stock. "Nursery stock" does not include cut
21 Christmas trees, wreaths, seeds, vegetables or fruits, agronomic
22 crops, cut or dried flowers, and cut or dried herbs;

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

1 ~~14.~~ 15. "Phytosanitary certificate" means a document issued by
2 the ~~State Board of Agriculture~~ Department indicating that the
3 specified live plants or plant products comply with the legal
4 requirements of the importing state or country. The document may be
5 either a State Phytosanitary Certificate or Federal Phytosanitary
6 Certificate;

7 ~~15.~~ 16. "Place of business" means each separate store, stand,
8 sales lot, or any other place at or from which nursery stock is
9 being sold or offered for sale;

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

17 ~~16.~~ 18. "Sales location" means any principal business location
18 where nursery stock is sold directly to a customer;

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

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

24

1 ~~19.~~ 20. "Silviculture" means the development and care of
2 forests;

3 ~~20.~~ 21. "Stop sale" means a legal document issued by the State
4 Board of Agriculture that prevents the production of or sale of
5 nursery stock due to an infestation of a ~~dangerously injurious~~ plant
6 pest; and

7 ~~21.~~ 22. "Turfgrass sod" means a strip or section of one or more
8 grasses or other plants acceptable for lawn plantings which, when
9 severed from its growing site, contains sufficient plant roots to
10 remain intact, and does not contain weeds in excess of the amount
11 specified by the Board;

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

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

17 Section 3-32.2 ~~Authorized agents of the State Board A.~~ 1. The
18 Oklahoma Department of Agriculture, Food, and Forestry shall have
19 the authority to inspect any orchard, fruit, ~~or~~ garden, park,
20 cemetery, private premises, public place, or any place ~~which~~ that
21 may be infested with a plant pest that may be a threat to plants
22 belonging to other property owners or the health or safety of the
23 general public.

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

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

10 B. The Department shall have the authority to issue notices of
11 violation, citations, compliance orders, conditional orders, stop
12 sales orders, stop work orders, quarantines, or any other order
13 authorized pursuant to the Oklahoma Agricultural Code.

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

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

22 2. The nursery stock does not bear the proper certificate,
23 plant tag information, or the required inspection or shipping
24 information.

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

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

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

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

18 1. Misrepresenting to another their connection with a nursery,
19 or to:

- 20 a. misrepresent the grade, character, variety, or quality
- 21 of any nursery stock,
- 22 b. make a false declaration of acreage,
- 23 c. conceal any nursery stock from inspection, or

- 1 d. offer for sale nursery stock which is seriously or
- 2 substantially devitalized;
- 3 2. Failing to furnish the ~~Board~~ Oklahoma Department of
- 4 Agriculture, Food, and Forestry with true and exact copies of order
- 5 forms, contracts, and agreements with customers;
- 6 3. Failing to furnish each purchaser, upon request, a true and
- 7 correct invoice of each purchase, stating the variety, quality, age,
- 8 or size of the stock to which the invoice applies;
- 9 4. Selling, offering for sale, or distributing any nursery
- 10 stock infected or infested with a plant pest;
- 11 5. Selling, offering for sale, or distributing nursery stock
- 12 that is not healthy, sound, and capable of growth;
- 13 6. Failing to carry out treatment or destruction of nursery
- 14 stock as ordered by the Board;
- 15 7. Misrepresenting or falsifying information on a license
- 16 application;
- 17 8. Doing business without a valid license;
- 18 9. Allowing a license to be used by any person other than the
- 19 person to whom it was issued;
- 20 10. Failing to notify the Board of the legal description of all
- 21 growing locations of nursery stock or sod;
- 22 11. Failing to allow an authorized agent to complete an
- 23 inspection or collect adequate samples;
- 24 12. Selling nursery stock restricted by a stop sale order;

1 13. Selling, moving, or distributing nursery stock or other
2 material under a quarantine;

3 14. Mislabeled nursery stock by using the wrong common name or
4 botanical name;

5 15. Transporting any regulated article into the state from a
6 quarantined area of any other state or country when the article has
7 not been treated or handled as provided by the requirements of the
8 quarantine;

9 16. Interfering with, hindering, or impeding, by any method,
10 any authorized agent of the Board in the performance of duties; ~~or~~

11 17. Falsifying or using false information to ship nursery stock
12 out of Oklahoma into any other state in the United States or any
13 country outside of the United States or making a false statement
14 regarding the condition, quality, grade, character, variety, or
15 treatment used; or

16 18. Failing to comply with any order of the Board.

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

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

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

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

5 3. "Adulterated" means and includes any pesticide if the
6 pesticide strength or purity falls below the professed standard of
7 quality as expressed on labeling or under which it is sold, or if
8 any substance has been substituted wholly or in part for the
9 components of the pesticide, or if any valuable constituent of the
10 components of the pesticide has been wholly or in part abstracted;

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

14 5. "Business location" means any place, site, or facility
15 maintained by a commercial or noncommercial applicator where
16 records, including but not limited to, financial statements,
17 payroll, insurance, and personnel documents are maintained,
18 pesticides are stored, or customers are served. A location serving
19 strictly as a telephone answering service shall not be considered a
20 business location;

21 6. "Certificate" means a written document issued to an
22 individual by the State Board of Agriculture which indicates that
23 the individual has met the certification standards established by
24 this subarticle for the category of pesticide application shown on

1 the certificate. A certificate does not allow a person to do work
2 as a commercial, noncommercial, service technician, or private
3 applicator unless employed by a licensed entity or has a valid
4 license issued by the Board;

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

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

9 9. "Commercial application" means the advertising of services,
10 recommendation for use, the preparation for application, and the
11 physical act of applying a pesticide or employment of a device for
12 hire or compensation;

13 10. "Commercial applicator" means any person engaging in the
14 commercial application of pesticides or commercial employment of
15 devices. Any farmer while working for a neighbor in agricultural
16 production, not advertising, and not held out to be in the business
17 of applying ~~restricted use of~~ restricted-use pesticides, shall not
18 be classified by the Board as a commercial applicator;

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

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

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

8 | 14. "Device" means any instrument subject to the United States
9 | Environmental Protection Agency regulation intended for trapping,
10 | destroying, repelling, or mitigating insects or rodents, or
11 | mitigating fungi, bacteria, or weeds, or other pests designated by
12 | the Board, but not including equipment used for the application of
13 | pesticides when sold separately;

14 | 15. "Direct supervision" means that the certified applicator is
15 | responsible for assuring that persons working, subject to direct
16 | supervision, are qualified to handle pesticides and are instructed
17 | in the application of the specific pesticides used in each
18 | particular application conducted which is subject to their
19 | supervision. Certified applicators shall be accessible to the
20 | noncertified applicator at all times during the application of the
21 | pesticide by telephone, radio, or any device approved by the Board;

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

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

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

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

10 20. "Inert ingredient" means an ingredient, which is not an
11 active ingredient;

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

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

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1 23. "Insecticide" means any pesticide intended for preventing,
2 destroying, repelling, or mitigating any insects which may be
3 present in any environment;

4 24. "Label" means the written, printed, or graphic matter
5 attached to the pesticide, device, or container including the
6 outside container or wrapper of the retail package of the pesticide
7 or device;

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

- 10 a. upon the pesticide, device, or any of its containers
11 or wrappers,
- 12 b. accompanying the pesticide or device at any time, or
- 13 c. to which reference is made on the label or in
14 literature accompanying the pesticide or device except
15 when accurate, nonmisleading reference is made to
16 current official publications of the United States
17 Environmental Protection Agency, United States
18 Department of Agriculture, United States Department of
19 the Interior, the United States Public Health Service,
20 State Experiment Stations, State Agricultural
21 Colleges, or other federal institutions or official
22 agencies of this state or other states authorized by
23 law to conduct research in the field of pesticides;

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

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

8 28. "Misbranded" means and includes:

9 a. any pesticide or device if its labeling bears any
10 statement, design, or graphic representation relative
11 to its ingredients which is false or misleading, or

12 b. any pesticide or device:

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

15 (2) if its labeling bears any reference to
16 registration under this subarticle,

17 (3) if the labeling accompanying it does not contain
18 instructions for use which are necessary and, if
19 complied with, adequate for the protection of the
20 public,

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

- 1 (5) if the label does not bear an ingredient
2 statement on that part of the immediate container
3 and on the outside container or wrapper, if there
4 is one, through which the ingredient statement on
5 the immediate container cannot be clearly read,
6 of the retail package which is presented or
7 displayed under customary conditions of purchase,
8 (6) if any word, statement, or other information
9 required by or under the authority of this
10 subarticle to appear on the labeling is not
11 prominently placed with conspicuousness, as
12 compared with other words, statements, designees,
13 or graphic matter in the labeling, and in terms
14 likely to be read and understood by an individual
15 under customary conditions of purchase and use,
16 or
17 (7) if in the case of an insecticide, fungicide, or
18 herbicide, when used as directed or in accordance
19 with commonly recognized practice, it shall be
20 injurious to humans, vertebrate animals, or
21 vegetation, except weeds, to which it is applied,
22 or to the person applying the pesticide;

23 29. "Noncommercial applicator" means any person, other than a
24 commercial or private applicator, who uses or supervises the use of

1 a restricted-use pesticide. The noncommercial applicator shall be
2 under the supervision of an owner or manager of property and who is
3 certified in the same manner as a commercial applicator. A
4 noncommercial applicator is subject to all requirements except those
5 pertaining to financial responsibility. Noncommercial applicator
6 includes a government employee applying restricted-use pesticides in
7 the discharge of official duties;

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

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

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

19 33. "Pest" means any organism harmful to man including, but not
20 limited to, insects, mites, nematodes, weeds, and pathogenic
21 organisms. Pathogenic organisms include viruses, mycoplasma,
22 bacteria, rickettsia, and fungi which the Board declares to be a
23 pest;

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

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

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

16 37. "Restricted_use pesticide" means any pesticide classified
17 for restricted use by the United States Environmental Protection
18 Agency, either by regulation or through the registration process, or
19 by the Board pursuant to the Oklahoma Agricultural Code;

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

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

1 40. "Service technician" means a person employed by a licensed
2 commercial or noncommercial applicator who applies the pesticide or
3 employs a device, but is not a certified applicator. A service
4 technician or certified applicator shall be present at each
5 application performed;

6 41. "Temporary certified applicator" means a person who has
7 successfully completed the written examinations required for
8 certification but has not successfully completed the practical
9 examination;

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

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

15 44. "Wood infestation report" means a document issued with a
16 property transaction which shall, at a minimum, contain statements
17 or certifications as to the presence or absence of termites and any
18 other wood destroying ~~organism~~ insects, and the presence or absence
19 of damage. The wood infestation report does not include a bid or
20 proposal for treatment.

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

23 Section 14-38. It shall be unlawful for any person to:
24

1 1. Sell, offer, or expose for sale any item for less than the
2 quantity represented or take more than the represented quantity when
3 the buyer furnishes the weight or measure which determines the
4 quantity; or

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

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

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

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

17 The intent of the Common Sense Consumption Act is to prevent
18 frivolous lawsuits against manufacturers, packers, distributors,
19 carriers, holders, sellers, marketers or advertisers of food
20 products that comply with applicable statutory and regulatory
21 requirements.

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

1 As used in the Common Sense Consumption Act:

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

8 2. "Generally known condition allegedly caused by or allegedly
9 likely to result from long-term consumption" means a condition
10 generally known to result or to likely result from the cumulative
11 effect of consumption, and not from a single instance of
12 consumption; and

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

14 a. the conduct constituting the violation was committed
15 with the intent to deceive or injure consumers or with
16 actual knowledge that such conduct was injurious to
17 consumers, and

18 b. the conduct constituting the violation was not
19 required by regulations, orders, rules or other
20 pronouncement of, or any statute administered by, a
21 federal, state, or local government agency.

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

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

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

18 1. A material violation of an adulteration or misbranding
19 requirement prescribed by statute or regulation of this state or the
20 United States of America and the claimed injury was proximately
21 caused by such violation; or

22 2. Any other material violation of federal or state law
23 applicable to the manufacturing, marketing, distribution,
24 advertising, labeling, or sale of food, provided that such violation

1 is knowing and willful, and the claimed injury was proximately
2 caused by such violation.

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

20 D. In any action exempted under subsection B of this section,
21 all discovery and other proceedings shall be stayed during the
22 pendency of any motion to dismiss unless the court finds upon the
23 motion of any party that particularized discovery is necessary to
24 preserve evidence or to prevent undue prejudice to that party.

1 During the pendency of any stay of discovery pursuant to this
2 subsection, unless otherwise ordered by the court, any party to the
3 action with actual notice of the allegations contained in the
4 complaint shall treat all documents, data compilations, including
5 electronically recorded or stored data, and tangible objects that
6 are in the custody or control of such party and that are relevant to
7 the allegations, as if they were the subject of a continuing request
8 for production of documents from an opposing party under Section
9 3234 of Title 12 of the Oklahoma Statutes.

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

13 SECTION 10. This act shall become effective November 1, 2007.

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