

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 710

By: Justice of the Senate

and

Hickman of the House

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7
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9 CONFERENCE 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 and providing an effective date.

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

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

Section 3-32.1 As used in this subarticle:

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

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

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

16 4. "Cultivar" means a horticulturally, silviculturally, or
17 agriculturally derived cultivated variety of a plant, as
18 distinguished from a natural variety;

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

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

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

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

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

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

20 9. 10. "Landscape" means a person who purchases nursery stock
21 and offers that stock for sale or planting through landscape
22 services and typically does not hold and maintain plants in a heel
23 yard or nursery;

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

4 ~~10.~~ 12. "Nursery" means and includes any field, ground,
5 greenhouse, bin, pit, plot, or premise where nursery or floral stock
6 is grown, propagated, or sold;

7 ~~11.~~ 13. "Nursery operator" means the person who owns, leases,
8 manages, or is in control of a nursery, and ~~is further defined as~~
9 any person who is a grower of nursery stock;

10 ~~12.~~ 14. "Nursery stock" means and includes, whether in field or
11 container, all trees, shrubs, vines, rosebushes, turfgrass,
12 cuttings, grafts, scions, fruit pits, herbaceous plants, evergreens
13 and other ornamental trees, bushes, collected wild plants and trees,
14 decorative plants, tropical plants, flowering plants, bedding
15 plants, vegetable plants for transplanting, aquatic plants, roots,
16 corms, rhizomes, bulbs, and ferns grown for propagation, all packing
17 materials, and other things used in the handling, storing, crating,
18 and shipping of nursery stock. "Nursery stock" does not include cut
19 Christmas trees, wreaths, seeds, vegetables or fruits, agronomic
20 crops, cut or dried flowers, and cut or dried herbs;

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

23 ~~14.~~ 15. "Phytosanitary certificate" means a document issued by
24 the ~~State Board of Agriculture~~ Department indicating that the

1 specified live plants or plant products comply with the legal
2 requirements of the importing state or country. The document may be
3 either a State Phytosanitary Certificate or Federal Phytosanitary
4 Certificate;

5 ~~15.~~ 16. "Place of business" means each separate store, stand,
6 sales lot, or any other place at or from which nursery stock is
7 being sold or offered for sale;

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

15 ~~16.~~ 18. "Sales location" means any principal business location
16 where nursery stock is sold directly to a customer;

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

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

22 ~~19.~~ 20. "Silviculture" means the development and care of
23 forests;

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1 ~~20.~~ 21. "Stop sale" means a legal document issued by the State
2 Board of Agriculture that prevents the production of or sale of
3 nursery stock due to an infestation of a ~~dangerously injurious~~ plant
4 pest; and

5 ~~21.~~ 22. "Turfgrass sod" means a strip or section of one or more
6 grasses or other plants acceptable for lawn plantings which, when
7 severed from its growing site, contains sufficient plant roots to
8 remain intact, and does not contain weeds in excess of the amount
9 specified by the Board;

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

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

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

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

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

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

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

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

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

23 D. The Board, after notice and opportunity for a hearing as
24 provided in the Administrative Procedures Act, Department shall also

1 have the authority to order the owner, occupant, or person in charge
2 to take any necessary action including, but not limited to, the
3 proper treatment or destruction of infested or diseased plants
4 pursuant to the Oklahoma Agricultural Code and the Administrative
5 Procedures Act.

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

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

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

16 1. Misrepresenting to another their connection with a nursery,
17 or to:

- 18 a. misrepresent the grade, character, variety, or quality
19 of any nursery stock,
- 20 b. make a false declaration of acreage,
- 21 c. conceal any nursery stock from inspection, or
- 22 d. offer for sale nursery stock which is seriously or
23 substantially devitalized;

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

1 14. Mislabeled nursery stock by using the wrong common name or
2 botanical name;

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

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

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

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

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

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

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

23 2. "Active ingredient" means an ingredient, which defoliates
24 plants, prevents fruit drop, inhibits sprouting, or destroys,

1 repels, or mitigates insects, fungi, bacteria, rodents, weeds, or
2 other pests;

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

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

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

19 6. "Certificate" means a written document issued to an
20 individual by the State Board of Agriculture which indicates that
21 the individual has met the certification standards established by
22 this subarticle for the category of pesticide application shown on
23 the certificate. A certificate does not allow a person to do work
24 as a commercial, noncommercial, service technician, or private

1 applicator unless employed by a licensed entity or has a valid
2 license issued by the Board;

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

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

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

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

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

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

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

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

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

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

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

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

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

8 20. "Inert ingredient" means an ingredient, which is not an
9 active ingredient;

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

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

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

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

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

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

21 26. "License" means a written document issued to a person by
22 the Board which shows that the person has met all established
23 licensing requirements established by this subarticle and who is

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1 authorized to apply pesticides as a commercial, noncommercial, or
2 private applicator pursuant to the license issued;

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

5 28. "Misbranded" means and includes:

6 a. any pesticide or device if its labeling bears any
7 statement, design, or graphic representation relative
8 to its ingredients which is false or misleading, or

9 b. any pesticide or device:

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

12 (2) if its labeling bears any reference to
13 registration under this subarticle,

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

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

22 (5) if the label does not bear an ingredient
23 statement on that part of the immediate container
24 and on the outside container or wrapper, if there

1 is one, through which the ingredient statement on
2 the immediate container cannot be clearly read,
3 of the retail package which is presented or
4 displayed under customary conditions of purchase,

5 (6) if any word, statement, or other information
6 required by or under the authority of this
7 subarticle to appear on the labeling is not
8 prominently placed with conspicuousness, as
9 compared with other words, statements, designees,
10 or graphic matter in the labeling, and in terms
11 likely to be read and understood by an individual
12 under customary conditions of purchase and use,
13 or

14 (7) if in the case of an insecticide, fungicide, or
15 herbicide, when used as directed or in accordance
16 with commonly recognized practice, it shall be
17 injurious to humans, vertebrate animals, or
18 vegetation, except weeds, to which it is applied,
19 or to the person applying the pesticide;

20 29. "Noncommercial applicator" means any person, other than a
21 commercial or private applicator, who uses or supervises the use of
22 a restricted-use pesticide. The noncommercial applicator shall be
23 under the supervision of an owner or manager of property and who is
24 certified in the same manner as a commercial applicator. A

1 noncommercial applicator is subject to all requirements except those
2 pertaining to financial responsibility. Noncommercial applicator
3 includes a government employee applying restricted-use pesticides in
4 the discharge of official duties;

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

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

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

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

21 34. "Pesticide" means a substance or mixture of substances
22 intended for defoliating or desiccating plants, preventing
23 fruitdrop, inhibiting sprouting, or for preventing, destroying,
24 repelling, or mitigating any insects, rodents, fungi, bacteria,

1 weeds, or other forms of plant or animal life or viruses, which the
2 Board declares to be a pest, except viruses on or in humans or
3 animals;

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

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

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

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

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

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

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

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

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

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

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

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

21 1. Sell, offer, or expose for sale any item for less than the
22 quantity represented or take more than the represented quantity when
23 the buyer furnishes the weight or measure which determines the
24 quantity; or

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

SECTION 6. This act shall become effective November 1, 2007.

51-1-2026 JT 11/27/2007 2:18:15 PM