

THE HOUSE OF REPRESENTATIVES  
Monday, April 16, 2007

Committee Substitute for  
ENGROSSED  
Senate Bill No. 710

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 710 - By:  
JUSTICE of the Senate and HICKMAN of the House.

An Act relating to agriculture; amending 2 O.S. 2001, Section 3-32.1, which relates to horticulture regulation; modifying definitions; amending 2 O.S. 2001, Section 3-32.2, which relates to inspections; expanding authority of the Department of Agriculture, Food, and Forestry; amending 2 O.S. 2001, Section 3-32.8, which relates to violations; expanding violations to include falsifying certain information; amending 2 O.S. 2001, Section 3-81, as 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 2 O.S. 2001, Section 14-38, which relates to unlawful misrepresentation; clarifying certain unlawful act; 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.

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

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

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

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

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

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

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

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

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

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

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

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

13          9. 10. "Landscape" means a person who purchases nursery stock and offers that  
14 stock for sale or planting through landscape services and typically does not hold and  
15 maintain plants in a heel yard or nursery;

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

18          10. 12. "Nursery" means and includes any field, ground, greenhouse, bin, pit, plot,  
19 or premise where nursery or floral stock is grown, propagated, or sold;

20          11. 13. "Nursery operator" means the person who owns, leases, manages, or is in  
21 control of a nursery, and ~~is further defined as any person who is a grower of nursery~~  
22 stock;

1       ~~12.~~ 14. “Nursery stock” means and includes, whether in field or container, all trees,  
2 shrubs, vines, rosebushes, turfgrass, cuttings, grafts, scions, fruit pits, herbaceous  
3 plants, evergreens and other ornamental trees, bushes, collected wild plants and trees,  
4 decorative plants, tropical plants, flowering plants, bedding plants, vegetable plants for  
5 transplanting, aquatic plants, roots, corms, rhizomes, bulbs, and ferns grown for  
6 propagation, all packing materials, and other things used in the handling, storing,  
7 crating, and shipping of nursery stock. “Nursery stock” does not include cut Christmas  
8 trees, wreaths, seeds, vegetables or fruits, agronomic crops, cut or dried flowers, and cut  
9 or dried herbs;

10       ~~13.~~ “Pest” means any living agent that is known to cause damage or harm to  
11 agriculture or the environment;

12       ~~14.~~ 15. “Phytosanitary certificate” means a document issued by the ~~State Board of~~  
13 ~~Agriculture~~ Department indicating that the specified live plants or plant products comply  
14 with the legal requirements of the importing state or country. The document may be  
15 either a State Phytosanitary Certificate or Federal Phytosanitary Certificate;

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

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

1        ~~16. 18.~~ "Sales location" means any principal business location where nursery stock  
2 is sold directly to a customer;

3        ~~17. 19.~~ "Sell" means to offer for sale, expose for sale, possess for sale, exchange,  
4 barter, or trade;

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

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

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

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

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

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

19        Section 3-32.2 ~~Authorized agents of the State Board~~ A. 1. The Oklahoma  
20 Department of Agriculture, Food, and Forestry shall have the authority to inspect any  
21 orchard, fruit, ~~or~~ garden, park, cemetery, private premises, public place, or any place

1 ~~which~~ that may be infested with a plant pest that may be a threat to plants belonging to  
2 other property owners or the health or safety of the general public.

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

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

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

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

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

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

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

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

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

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

- 14        1. Misrepresenting to another their connection with a nursery, or to:
- 15            a.        misrepresent the grade, character, variety, or quality of any nursery
  - 16                        stock,
  - 17            b.        make a false declaration of acreage,
  - 18            c.        conceal any nursery stock from inspection, or
  - 19            d.        offer for sale nursery stock which is seriously or substantially
  - 20                        devitalized;

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1           7. "Certification standards" means the standards that a person shall meet to  
2 become a certified applicator;
- 3           8. "Certified applicator" means a person who has met the certification standards;
- 4           9. "Commercial application" means the advertising of services, recommendation for  
5 use, the preparation for application, and the physical act of applying a pesticide or  
6 employment of a device for hire or compensation;
- 7           10. "Commercial applicator" means any person engaging in the commercial  
8 application of pesticides or commercial employment of devices. Any farmer while  
9 working for a neighbor in agricultural production, not advertising, and not held out to be  
10 in the business of applying ~~restricted use of~~ restricted-use pesticides, shall not be  
11 classified by the Board as a commercial applicator;
- 12           11. "Contract" means a binding, written agreement between two or more persons  
13 spelling out terms and conditions and includes, but is not limited to, warranties or  
14 guarantees for pesticide application. For structural pest control applications, the  
15 contract shall also include a statement, plat, or diagram showing all locations of visible  
16 termites and termite damaged materials which are observed, and how the application  
17 was performed;
- 18           12. "Defoliant" means any pesticide intended to cause the leaves or foliage to drop  
19 from a plant, with or without causing abscission;
- 20           13. "Desiccant" means any pesticide intended to artificially accelerate the drying of  
21 plant tissues;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 28. "Misbranded" means and includes:

12 a. any pesticide or device if its labeling bears any statement, design, or  
13 graphic representation relative to its ingredients which is false or  
14 misleading, or

- 15 b. any pesticide or device:
- 16 (1) if it is an imitation of or is offered for sale under the name of
  - 17 another pesticide or device,
  - 18 (2) if its labeling bears any reference to registration under this
  - 19 subarticle,
  - 20 (3) if the labeling accompanying it does not contain instructions for
  - 21 use which are necessary and, if complied with, adequate for the
  - 22 protection of the public,

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

21 29. "Noncommercial applicator" means any person, other than a commercial or  
22 private applicator, who uses or supervises the use of a restricted-use pesticide. The

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

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

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

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

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

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



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

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

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

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

13 38. "Restricted-use pesticide dealer" means any person engaged in the sale, storage,  
14 or distribution of restricted-use pesticides;

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

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

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

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

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

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

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

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

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

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

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

4 Sections 6 through 9 of this act shall be known and may be cited as the “Common  
5 Sense Consumption Act”.

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

9 The intent of the Common Sense Consumption Act is to prevent frivolous lawsuits  
10 against manufacturers, packers, distributors, carriers, holders, sellers, marketers or  
11 advertisers of food products that comply with applicable statutory and regulatory  
12 requirements.

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

16 As used in the Common Sense Consumption Act:

17 1. “Claim” means any claim by or on behalf of a natural person, as well as any  
18 derivative or other claim arising therefrom asserted by or on behalf of any other  
19 individual, corporation, company, association, firm, partnership, society, joint-stock  
20 company, or any other entity, including any governmental entity or governmental officer,  
21 or private attorney;

1           2. “Generally known condition allegedly caused by or allegedly likely to result from  
2 long-term consumption” means a condition generally known to result or to likely result  
3 from the cumulative effect of consumption, and not from a single instance of  
4 consumption; and

5           3. “Knowing and willful” violation means that:

- 6           a.       the conduct constituting the violation was committed with the intent to  
7                    deceive or injure consumers or with actual knowledge that such  
8                    conduct was injurious to consumers, and
- 9           b.       the conduct constituting the violation was not required by regulations,  
10                   orders, rules or other pronouncement of, or any statute administered  
11                   by, a federal, state, or local government agency.

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

15           A. Except as provided in subsection B of this section, a manufacturer, packer,  
16 distributor, carrier, holder, seller, marketer or advertiser of a food, as defined in Section  
17 201(f) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)), or an association of  
18 one or more such entities, shall not be subject to civil liability arising under any law of  
19 this state, including all statutes, regulations, rules, common law, public policies, court or  
20 administrative decisions or decrees, or other state action having the effect of law, for any  
21 claim arising out of weight gain, obesity, a health condition associated with weight gain

1 or obesity, or other generally known condition allegedly caused by or allegedly likely to  
2 result from long-term consumption of food.

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

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

10 2. Any other material violation of federal or state law applicable to the  
11 manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided  
12 that such violation is knowing and willful, and the claimed injury was proximately  
13 caused by such violation.

14 C. In any action exempted under paragraph 1 of subsection B of this section, the  
15 complaint initiating such action shall state with particularity the following: the statute,  
16 regulation or other law of this state or of the United States that was allegedly violated;  
17 the facts that are alleged to constitute a material violation of such statute or regulation;  
18 and the facts alleged to demonstrate that such violation proximately caused actual injury  
19 to the plaintiff. In any action exempted under paragraph 2 of subsection B of this  
20 section, in addition to the foregoing pleading requirements, the complaint initiating such  
21 action shall state with particularity facts sufficient to support a reasonable inference that  
22 the violation was with intent to deceive or injure consumers or with the actual knowledge

1 that such violation was injurious to consumers. For purposes of applying the Common  
2 Sense Consumption Act, the foregoing pleading requirements are hereby deemed part of  
3 the substantive law of this state and not merely in the nature of procedural provisions.

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON NATURAL RESOURCES, dated 04-12-  
19 07 - DO PASS, As Amended.