

THE STATE SENATE  
Monday, February 26, 2007

Committee Substitute for  
Senate Bill No. 710

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

[ agriculture - horticulture regulation - expanding  
authority - 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. "Broker" means any person who negotiates the purchase or  
sale of any nursery stock. A broker may or may not handle ~~either~~  
the nursery stock ~~which is involved~~ or the proceeds of a sale;

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

3. "Compliance agreement" means any written document between a  
person and the ~~State~~ Oklahoma Department of Agriculture, Food, and

1 Forestry or the United States Department of Agriculture to achieve  
2 compliance with any set of requirements being enforced by the  
3 Department;

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

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

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

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

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

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

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

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

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

15        ~~10.~~ 12. "Nursery" means and includes any field, ground,  
16 greenhouse, bin, pit, plot, or premise where nursery or floral stock  
17 is grown, propagated, or sold;

18        ~~11.~~ 13. "Nursery operator" means the person who owns, leases,  
19 manages, or is in control of a nursery, and ~~is further defined as~~  
20 any person who is a grower of nursery stock;

21        ~~12.~~ 14. "Nursery stock" means and includes, whether in field or  
22 container, all trees, shrubs, vines, rosebushes, turfgrass,  
23 cuttings, grafts, scions, fruit pits, herbaceous plants, evergreens

1 and other ornamental trees, bushes, collected wild plants and trees,  
2 decorative plants, tropical plants, flowering plants, bedding  
3 plants, vegetable plants for transplanting, aquatic plants, roots,  
4 corms, rhizomes, bulbs, and ferns grown for propagation, all packing  
5 materials, and other things used in the handling, storing, crating,  
6 and shipping of nursery stock. "Nursery stock" does not include cut  
7 Christmas trees, wreaths, seeds, vegetables or fruits, agronomic  
8 crops, cut or dried flowers, and cut or dried herbs;

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

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

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

20 17. "Plant pest" means any pest known to cause damage or harm  
21 to ~~of~~ plants, agricultural commodities, horticultural products,  
22 nursery stock, silvicultural interests, or ~~non-cultivated plants the~~  
23 environment. Plant pest includes, but is not limited to, insects,

1 snails, nematodes, fungi, viruses, bacterium, microorganisms,  
2 mycoplasma-like organisms, weeds, plants, or other parasitic higher  
3 plants;

4 ~~16.~~ 18. "Sales location" means any principal business location  
5 where nursery stock is sold directly to a customer;

6 ~~17.~~ 19. "Sell" means to offer for sale, expose for sale,  
7 possess for sale, exchange, barter, or trade;

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

11 ~~19.~~ 20. "Silviculture" means the development and care of  
12 forests;

13 ~~20.~~ 21. "Stop sale" means a legal document issued by the State  
14 Board of Agriculture that prevents the production of or sale of  
15 nursery stock due to an infestation of a ~~dangerously injurious~~ plant  
16 pest; and

17 ~~21.~~ 22. "Turfgrass sod" means a strip or section of one or more  
18 grasses or other plants acceptable for lawn plantings which, when  
19 severed from its growing site, contains sufficient plant roots to  
20 remain intact, and does not contain weeds in excess of the amount  
21 specified by the Board;

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

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

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

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

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

22       B. The Department shall have the authority to issue notices of  
23 violation, citations, compliance orders, conditional orders, stop

1 sales orders, stop work orders, quarantines, or any other order  
2 authorized pursuant to the Oklahoma Agricultural Code.

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

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

11 2. The nursery stock does not bear the proper certificate,  
12 plant tag information, or the required inspection or shipping  
13 information.

14 D. The Board, after notice and opportunity for a hearing as  
15 provided in the Administrative Procedures Act, Department shall also  
16 have the authority to order the owner, occupant, or person in charge  
17 to take any necessary action including, but not limited to, the  
18 proper treatment or destruction of infested or diseased plants  
19 pursuant to the Oklahoma Agricultural Code and the Administrative  
20 Procedures Act.

21 E. For the purpose of securing uniformity of rules, no city,  
22 town, county, or other political subdivision of this state shall  
23 adopt or continue in effect any ordinance, rule, regulation, or

1 statute regarding nursery stock sales or distribution that is more  
2 stringent than the rules of the State Board of Agriculture.

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

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

8 1. Misrepresenting to another their connection with a nursery,  
9 or to:

10 a. misrepresent the grade, character, variety, or quality  
11 of any nursery stock,

12 b. make a false declaration of acreage,

13 c. conceal any nursery stock from inspection, or

14 d. offer for sale nursery stock which is seriously or  
15 substantially devitalized;

16 2. Failing to furnish the ~~Board~~ Oklahoma Department of  
17 Agriculture, Food, and Forestry with true and exact copies of order  
18 forms, contracts, and agreements with customers;

19 3. Failing to furnish each purchaser, upon request, a true and  
20 correct invoice of each purchase, stating the variety, quality, age,  
21 or size of the stock to which the invoice applies;

22 4. Selling, offering for sale, or distributing any nursery  
23 stock infected or infested with a plant pest;



- 1        5. Selling, offering for sale, or distributing nursery stock
- 2        that is not healthy, sound, and capable of growth;
- 3        6. Failing to carry out treatment or destruction of nursery
- 4        stock as ordered by the Board;
- 5        7. Misrepresenting or falsifying information on a license
- 6        application;
- 7        8. Doing business without a valid license;
- 8        9. Allowing a license to be used by any person other than the
- 9        person to whom it was issued;
- 10       10. Failing to notify the Board of the legal description of all
- 11       growing locations of nursery stock or sod;
- 12       11. Failing to allow an authorized agent to complete an
- 13       inspection or collect adequate samples;
- 14       12. Selling nursery stock restricted by a stop sale order;
- 15       13. Selling, moving, or distributing nursery stock or other
- 16       material under a quarantine;
- 17       14. Mislabeling nursery stock by using the wrong common name or
- 18       botanical name;
- 19       15. Transporting any regulated article into the state from a
- 20       quarantined area of any other state or country when the article has
- 21       not been treated or handled as provided by the requirements of the
- 22       quarantine;

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

3        17. Falsifying or using false information to ship nursery stock  
4 out of Oklahoma into any other state in the United States or any  
5 country outside of the United States or making false statement  
6 regarding the condition, quality, grade, character, variety, or  
7 treatment used.

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

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

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

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

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

21        3. "Adulterated" means and includes any pesticide if the  
22 pesticide strength or purity falls below the professed standard of  
23 quality as expressed on labeling or under which it is sold, or if

1 any substance has been substituted wholly or in part for the  
2 components of the pesticide, or if any valuable constituent of the  
3 components of the pesticide has been wholly or in part abstracted;

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

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

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

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

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

3        9. "Commercial application" means the advertising of services,  
4 recommendation for use, the preparation for application, and the  
5 physical act of applying a pesticide or employment of a device for  
6 hire or compensation;

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

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

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

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

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

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

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

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

22        18. "Ground equipment" means any machine, equipment, or device  
23 other than aircraft designed for use, adaptable for use, or used on

1 land or water in applying pesticides as sprays, dusts, aerosols,  
2 fogs, or other forms;

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

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

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

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

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

22 24. "Label" means the written, printed, or graphic matter  
23 attached to the pesticide, device, or container including the

1 outside container or wrapper of the retail package of the pesticide  
2 or device;

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

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

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

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

3        28. "Misbranded" means and includes:

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

7            b. any pesticide or device:

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

10               (2) if its labeling bears any reference to  
11 registration under this subarticle,

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

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

20               (5) if the label does not bear an ingredient  
21 statement on that part of the immediate container  
22 and on the outside container or wrapper, if there  
23 is one, through which the ingredient statement on



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

19 29. "Noncommercial applicator" means any person, other than a  
20 commercial or private applicator, who uses or supervises the use of  
21 a restricted use pesticide. The noncommercial applicator shall be  
22 under the supervision of an owner or manager of property and who is  
23 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. "Non-restricted use pesticide" means any pesticide, other  
6 than a pesticide classified as restricted-use pesticide;

7 31. "Non-restricted 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,

1 repelling, or mitigating any insects, rodents, fungi, bacteria,  
2 weeds, or other forms of plant or animal life or viruses, which the  
3 Board declares to be a pest, except viruses on or in humans or  
4 animals;

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

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

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

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

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

22 40. "Service technician" means a person employed by a licensed  
23 commercial or noncommercial applicator who applies the pesticide or

1 employs a device, but is not a certified applicator. A service  
2 technician or certified applicator shall be present at each  
3 application performed;

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

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

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

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

19 SECTION 5. This act shall become effective November 1, 2007.

20 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-21-07 - DO  
21 PASS, As Amended and Coauthored.