

Sixty-first  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1560

Introduced by

Representative Schneider

1 A BILL for an Act to amend and reenact section 28-01.3-04 of the North Dakota Century Code,  
2 relating to the liability of nonmanufacturing sellers.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 28-01.3-04 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **28-01.3-04. Liability of nonmanufacturing sellers.**

- 7 1. In any products liability action maintained against a seller of a product who did not  
8 manufacture the product, the seller ~~shall~~, upon answering or otherwise pleading,  
9 shall file an affidavit certifying the correct identity of the manufacturer of the  
10 product allegedly causing the personal injury, death, or damage to property.
- 11 2. After the plaintiff has filed a complaint against the manufacturer and the  
12 manufacturer has or is required to have answered or otherwise pleaded, the court  
13 shall order the dismissal of the claim against the certifying seller, unless the  
14 plaintiff can show any of the following:
- 15 a. That the certifying seller exercised some significant control over the design or  
16 manufacture of the product, or provided instructions or warnings to the  
17 manufacturer relative to the alleged defect in the product which caused the  
18 personal injury, death, or damage to property.
- 19 b. That the certifying seller had actual knowledge of the defect in the product  
20 which caused the personal injury, death, or damage to property.
- 21 c. That the certifying seller created the defect in the product which caused the  
22 personal injury, death, or damage to property.

- 1           3.   ~~The plaintiff may at~~ At any time prior to ~~before~~ the beginning of the trial, the plaintiff  
2           may move to vacate the order of dismissal and reinstate the certifying seller if the  
3           plaintiff can show any of the following:
- 4           a.   That the applicable statute of limitation bars a product liability action against  
5           the manufacturer of the product allegedly causing the injury, death, or  
6           damage.
- 7           b.   That the identity of the manufacturer given to the plaintiff by the certifying  
8           defendant was incorrect.
- 9           4.   The wholesale supplier or the importer of a product who would otherwise be  
10          entitled to dismissal from an action is not entitled to dismissal from an action if:
- 11          a.   The product or a component alleged to be defective was manufactured in a  
12          foreign country; or
- 13          b.   The manufacturer of the product is not subject to suit in this state due to the  
14          lack of personal or subject matter jurisdiction in this state.