



North Dakota Association for Justice

PO Box 365

Mandan, ND 58554

The Trial Lawyers of North Dakota

Jaclyn Hall, Executive Director

jaclyn@ndaj.org

Chairman Luick and members of the Senate Agriculture and Veterans Affairs Committee. My name is Jaci Hall, Executive Director of the North Dakota Association for Justice. Today, I am here to answer some questions that have come up regarding HB1318 and the amendment provided by NDAJ.

Under current North Dakota law, when a pesticide is misbranded, liability clearly rests with the manufacturer who violated federal law. Product sellers are protected by North Dakota product liability law and employers can rely on labels of the products they give to employees. Manufacturers have the primary responsibility to accurately test, label, and warn of potential risks. HB 1318 would fundamentally alter this established accountability.

HB 1318, as drafted, grants manufacturers total immunity for merely complying with EPA labeling—even if they know the label is misrepresented. If adopted, responsibility could shift toward other parties depending on the facts, potentially affecting local chemical sellers and farm employers.

Sellers are currently shielded by North Dakota's product liability statute, could face liability if they possess actual knowledge of undisclosed defects or risks. Specifically, under N.D.C.C. § 28-01.3-04, sellers who are aware of risks not disclosed on EPA labels could find themselves liable. Now N.D.C.C § 28-01.3-05 says a manufacturer ordinarily would need to indemnify a seller--pay for their legal costs and liability--but HB 1318 wipes that out too because it applies "notwithstanding any other provision of law."

This means a chemical seller who becomes aware of a product's danger could bear liability currently assigned to manufacturers, and the manufacturer wouldn't have an obligation to indemnify them either.

Under HB1318 employers who hire farm workers could also face increased liability. If they don't have workers' compensation coverage, farm employers have duties to maintain safe working environments, provide safe equipment, and adequately warn employees about potential dangers. **If pesticide manufacturers are immune, then employers may**



North Dakota Association for Justice
PO Box 365
Mandan, ND 58554
The Trial Lawyers of North Dakota

Jaclyn Hall, Executive Director
jaclyn@ndaj.org

bear the liability for risks that should have been disclosed by the manufacturers.

By giving manufacturers immunity, HB 1318 places additional burdens on chemical sellers and farm employers to protect their customers and employees. If a customer or employee gets cancer, and they can't hold the manufacturer accountable, there really isn't anyone else who has a duty to keep them safe than the seller and the employer. I think we all agree the manufacturer *should* be responsible for the safety of the products they sell and ensure it isn't misbranded.

And that is what our amendment is designed to do. Our amendment says that if a company violates federal misbranding law, then you can hold them accountable for causing cancer, or Parkinson's or losing your acreage. However, It is still a high bar. The plaintiff will still have to prove that the product caused their cancer--for example, under this amendment the plaintiff would have to prove that glyphosate **actually** caused their cancer in order to recover--but the amendment will give them the opportunity to hold the manufacturer accountable in those circumstances, which is much more straightforward and clear for everyone, and fair.

When someone is injured, it is common practice to hold the entity or person who is liable for the injury accountable. This amendment will allow farmers and the public to hold the correct person liable for their losses.

Now, let's talk about the recent case in Georgia. In this case, Home Depot was the first defendant in the case, and they were dismissed because the manufacturer was ultimately the entity potentially liable for Mr. Barnes' cancer diagnosis. At the end of the trial, Mr. Barnes was awarded \$65 million in compensatory damages and \$2 billion in punitive damages. The question I was asked was whether a verdict like this could be awarded in North Dakota. The answer is simply No. North Dakota's punitive statute says the cap of punitives awarded in North Dakota is either two times the compensatory damages or \$250,000 – whichever is larger.

Finally, I wanted to talk a bit about products liability cases. These cases in general are very costly and time consuming to bring forward because of the



North Dakota Association for Justice
PO Box 365
Mandan, ND 58554
The Trial Lawyers of North Dakota

Jaclyn Hall, Executive Director
jaclyn@ndaj.org

technical nature of the case. There are many different options to bring a products case forward, but under HB1318, the normal path would be superseded by this statute for farmers and those injured by misbranded chemicals.

This legislation is simply not needed. If the committee chooses to bring the case forward with a Do Pass, I ask you to consider utilizing both amendments presented last week. This way, the health and safety of the individual is considered and the pathway for misbranding is clear for farmers and those impacted by misbranded chemicals.

Below is a table on how HB1318 can be used to block claims.

