

January 27, 2025

John Ward, Association of North Dakota Insurers

## Testimony in support of SB 2250

Good Morning Chairman Barta and Members of the Committee:

My name is John Ward and I am local Bismarck attorney and lobbyist representing the Association of North Dakota Insurers or ANDI. ANDI is composed of North Dakota domestic insurance companies and other members. ANDI's members include Nodak Insurance, Center Mutual, Farmers Union, and Heartland, among others.

I am here today in support of SB2250 which seeks to amend NDCC § 32-03-30, which relates to Damages for Wrongful Injuries to Timber. NDCC § 32-03-30 provides as follows:

For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except when the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser, or when the wood was taken by the authority of highway officers for the purposes of a highway. In such a case the damages are a sum equal to the actual detriment.

(the "Timber Statute")

The Timber Statute has been on the books in some form since 1877. The Language of the Timber Statute is somewhat antiquated and the purpose of this revision is to clarify the statute. This amendment clarifies that treble damages apply to willful and wanton acts, where a person injures another person's trees or shrubs, specifically with the intent to actually harm or damage the trees of another.

The second part of the amendment clarifies that treble damages do not apply to merely negligent acts.

There has been some confusion in the Courts with the 1877 language that is still on the books.

The amended bill before this committee seeks to clarify that a person, who intentionally or recklessly cuts down his or her neighbor's tree, may be responsible for three times the value of the tree. It is imperative that the person causing the tree damage is acting with the intent to do the harm.

I also work as an attorney for the firm ES ATTORNEYS. My firm has litigated many of these tree damage cases. Plaintiff's lawyers often try to blur the lines between intentional and merely negligent acts. The 1877 language of the statute relies on the term "casual and involuntary" to take a person out of the required intent to be liable for treble damages or triple damages under the former 1877 statute that remains on the books today. The Amended Bill before you removes the confusing standard of casual and involuntary and clarifies that this statute only applies where there is the requisite intent to cause damage to someone's trees.

A person who unintentionally or negligently causes damage to trees may still be held liable for those damages, but the damages are the actual value of the damage that he or she caused.

SB 2250 eliminates the unnecessary and unclear language from the statute. This bill has come to the attention of ANDI after having litigated many of these cases in recent years, where Plaintiff's attorneys sought outrageous damages for relatively commonplace occurrences, such as a fire caused by a combine fire during harvest.

The consequences of the ambiguity in the existing 1877 language is that treble damages are presumed to apply unless the Defendant can show that the action causing the fire was "casual and involuntary". Well, what does that mean?

The proposed revisions to NDCC § 32-03-30 are to clarify the statute.

ANDI urges a DO PASS on SB 2250.

Thank you for your support,

John Ward