

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 product
10 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 plaintiff
14 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 seller or the wholesale supplier or the importer of a product who would
10 otherwise be entitled to dismissal from an action is not entitled to dismissal from an
11 action if:
- 12 a. The product or a component alleged to be defective was manufactured in a
13 foreign country; or
- 14 b. The manufacturer of the product is not subject to suit in this state due to the
15 lack of personal or subject matter jurisdiction in this state.