



Contact:
Matt Perdue, Lobbyist
mperdue@ndfu.org | 701.641.3303

**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
Senate Agriculture and Veterans Affairs Committee
March 14, 2025**

Chairman Luick and members of the committee,

Thank you for the opportunity to testify on House Bill No. 1318. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union's (NDFU) members.

For more than 50 years, glyphosate has been a trusted tool for farmers. Over half of all wheat acres, 80% of corn acres, and 92% of soybean acres rely on glyphosate-based herbicides to control invasive weeds and keep costs low.¹ We share concerns regarding frivolous lawsuits that could ultimately undermine farmers' access to critical crop protection products. We generally support efforts to protect farmers' access to these products.

We also believe it is important for farmers to have the opportunity to seek recourse through the courts if they are harmed by another's action. Since we first learned of this legislation, we have raised several questions regarding the bill's impact on farmers' right to seek legal recourse. It is our understanding this bill is aimed at limiting the potential for North Dakota to adopt unique labeling requirements for pesticides. We support that intent. However, we remain concerned about the impact of lines 16 and 17 of the bill, concerning the duty to warn.

FIFRA Preemption

As you know, chemicals are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA grants EPA authority over pesticide labeling and packaging. FIFRA preempts state labeling and packaging standards. Historically, courts have strictly prohibited states from enacting labeling or packaging standards "in addition to," or "different from" federal standards. In the last 20 years, the courts have loosened that standard, instead requiring state labelings and packaging to be "equivalent to" or "consistent with" federal labels.² We support the historical standard and oppose efforts to adopt labels in North Dakota or other states that are "in addition to" or "different from" federal requirements.

¹ United States Department of Agriculture, National Agricultural Statistics Service. (2024). *Agricultural Chemical Use Program*. Retrieved from [https://www.nass.usda.gov/Surveys/Guide to NASS Surveys/Chemical Use/](https://www.nass.usda.gov/Surveys/Guide%20to%20NASS%20Surveys/Chemical%20Use/).

² Hartman, J., and Rollins, B. (2021). *Preemption under the Federal Insecticide, Fungicide and Rodenticide Act*. The National Agricultural Law Center. Retrieved from <https://nationalaglawcenter.org/wp-content/uploads/assets/articles/FIFRA-Fact-Sheet-w.pdf>.



However, this legislation's reference to duty to warn appears to go beyond labeling requirements and more broadly limits farmers' right to seek recourse if they are harmed by a failure to warn.

Duty to Warn

FIFRA prohibits misbranding products, which includes "false or misleading" statements or labels that omit necessary warnings. While FIFRA grants EPA the authority to cancel a pesticide registration for misbranding, FIFRA does not provide a private right of action. So, an individual who is harmed by the misbranding of a crop protection product may not sue for damages under FIFRA. Instead, the individual must seek a remedy under applicable state law.³

Plaintiffs filing pesticide injury lawsuits frequently allege a failure to warn.⁴ Many of these lawsuits claim the products caused negative health effects. It is likely many of these suits are what we would consider frivolous. However, failure to warn has also been alleged in suits claiming that dicamba drift caused crop damage. While other cases are still working through the judicial system, one case – Bader Farms v. Monsanto – was successful and subsequently upheld after appeal.⁵

Conclusion

NDFU supports the legislation's intent of protecting crop protection products from frivolous lawsuits. We remain concerned that the broad reference to duty to warn may prevent farmers from seeking recourse in legitimate cases. We believe the committee can mitigate that concern by:

- a. Amending the legislation to eliminate references to duty to warn and adding a clear prohibition on pesticide labels or requirements in addition to or different from those required under FIFRA;
- b. Limiting the impact of the legislation to actions alleging harm to human health caused by a failure to warn; or
- c. Amending the legislation to exempt complaints that are consistent with FIFRA mislabeling standards.

Thank you for your consideration. I will stand for any questions.

³ Rollins, B. (n.d.) *The Deal with Dicamba: Part Three*. The National Agricultural Law Center. Retrieved from <https://nationalaglawcenter.org/the-deal-with-dicamba-part-three/>.

⁴ Rollins, B. (n.d.). *Plaintiffs & Pesticides: Failure to Warn Claims in Pesticide Injury Lawsuits*. The National Agricultural Law Center. Retrieved from <https://nationalaglawcenter.org/plaintiffs-pesticides-failure-to-warn-claims-in-pesticide-injury-lawsuits/>.

⁵ Rollins B. (n.d.) *The Deal with Dicamba: Part Three*. The National Agricultural Law Center. Retrieved from <https://nationalaglawcenter.org/the-deal-with-dicamba-part-three/>.