

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1241

2005 HOUSE JUDICIARY

HB 1241

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1241

House Judiciary Committee

Conference Committee

Hearing Date 1/17/05

Tape Number	Side A	Side B	Meter #
1	xx		40-end
1		xx	0-32.7

Committee Clerk Signature



Minutes: 14 members present.

**Chairman DeKrey:** We will open the hearing on HB 1241.

**Representative Koppelman:** I am the sponsor of this bill, support it (see written testimony).

**Representative Galvin:** Will this affect class action lawsuits.

**Representative Koppelman:** I'm not sure, I assume it would affect single party lawsuits, as well as class action suits. I should point out that there are some provisions in the bill, which would allow for such suits if, for example, a food manufacturer were to have harmful ingredients in a product and were to willfully mislabel that product and it did harm to you or even caused obesity if you weren't aware of that, if they tried to disguise what they were doing. It would certainly allow for that.

**Representative Delmore:** In the light of the obesity charges that we are seeing all the time, I can understand the introduction of the bill. What would have happened if 25 years ago we did the same thing for tobacco companies, how would that have affected where we are going. I guess

I think the bottom line is that for everything that we are seeing coming out from smoking right now, the money that is coming in for a pack of cigarettes. If we had limited the liability in this way, what would have happened.

**Representative Koppelman:** I don't know. I do know that the tobacco lawsuits that many states are benefiting from today, are not actions on behalf of individuals. It's not a question of somebody who died of cancer suing a tobacco company. That's happened, and those suits have been defeated as far as I know. The successful litigation against tobacco has been states in suing tobacco companies, essentially saying we put out all this money for Medicaid and public assistance because you sold a product that was harmful to people's health. I think some of the basis for those cases also, has been deception. It was the theory that the tobacco companies have denied the addictive nature of their product, denied the harmful nature of their product and tried to disguise it, despite the Surgeon General's warning notwithstanding; and therefore, have arguably deceived some people. This bill would allow for lawsuits if deception is occurring.

**Representative Klemin:** Section 3 on page 2 of this bill, I guess my question is I guess there might be a verb missing in the first part of it, is it the intention here that there is no stay unless a motion to dismiss is filed first, and then the other side, if they don't want the stay would have to file a separate motion in response indicating that discovery is necessary to preserve evidence and so forth. It's not an automatic stay.

**Representative Koppelman:** Correct. I believe that is correct. Sen. Trenbeath asked that same question when we were looking at the bill draft. I actually requested an opinion, not an official opinion, comment from the administrator of the Supreme Court to see if this would run

afoul of any rules of evidence in place. The short answer was no. I can get you a copy of that entire memo if you like. I think that is the intent.

**Chairman DeKrey:** Thank you.

**Rep. Iverson:** I support the bill (related several personal stories). It is my personal responsibility to control my appetite and what I take in. To blame those who sell those foods, lacks common sense that God put in all of us. Don't blame them for selling food, blame the individual who eats too much of it.

**Chairman DeKrey:** Thank you.

**Rep. Kasper:** I did want to comment on what is the responsibility of each one of us as individuals. We live in a republic that allows us to make choices and the laws under which we live, under our constitution, state that you can make choices as long as they don't infringe on other people's rights or harm them in the choices that you make. Some people make poor choices and our society seemed to have drifted toward the area that is "not my fault" it is "your fault". I think this bill addresses that problem in the area of consumption of food. Let the people be responsible.

**Representative Galvin:** I never had a gun to my head, but my mother always said "clean up your plate, kids in China are starving".

**Rep. Kasper:** By the time the stuff you didn't eat would have gotten to them, I don't think they would have wanted to eat it.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1241.

**Rep. Thoreson:** I am in support of this bill (see written testimony). This bill is to keep lawyers from bringing nuisance suits against fast food restaurants, etc.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1241.

**Bill Shalhoob, ND Hospitality Association:** I am in support of this bill. It is legislation favored by the National Restaurant Association, and the important distinction that we can make in this, is in terms of the restaurants and smoking, we don't disguise what we sell. We sell food that's good, don't necessarily claim to sell good food that's always good for you. Most of us offer healthy choices for our menus.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1241.

**David Straley, Greater ND Chamber of Commerce:** I am in support of this bill and urge a Do Pass. The business community supports HB 1241, because it would place some responsibility on the consumer. We feel everyone should take responsibility for their actions and this would help prevent unnecessary litigation.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Eric Aasmundstad, ND Farm Bureau:** I support this bill (see written testimony).

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1241. Testimony in opposition to HB 1241.

**Paula Grosinger, ND Trial Lawyers Association:** The claims about junk lawsuits are not true. Previously in this committee, I have cited statistics from the National Center for State Courts, which cites that tort filings nationally continue to decline. In ND, civil filings are actually down. In ND, the majority of civil filings are actually things like family law proceedings, divorce, child custody and then contract collections cases, rather than tort filings, where someone is alleging that a harm has been inflicted upon them. We've certainly had no lawsuits centered around this particular problem. The Association I represent, also believes in personal responsibility, but we

believe in corporate responsibility as well. Representative Koppelman cited the McDonalds hot coffee case in relation to this particular bill. A classic example of a case that has been misquoted and misunderstood by the public at large. That particular case involved allegations in which an elderly woman was severely burned by hot coffee she had purchased from the McDonalds drive-thru window and her grandson, who was the driver of the car, pulled into a parking place, allowing her the opportunity to open the lid on the coffee and add cream to it, and while opening the lid the coffee spilled onto her lap causing very, very severe burn injury. What is remarkable about that case, and what never seems to hit the light of day, is the fact that McDonald's in that area of the county (in Texas) had had over 700 complaints of burn injury, because they served their coffee at a temperature that was 20 degrees higher than the recommended temperature and one that was known to cause severe burn injury. Initially, the victim had asked that McDonalds just compensate her for her injuries, and McDonalds (which had previously paid compensation to other victims of similar injuries) refused in that case, and decided that they were going to fight the case, not pay any compensation for the burn injury, and she could have her day in court. She pursued it in court, won a very significant award from the jury (about \$2.4 million) and the fact that never is publicized, is that ultimately, the award in that case was amended by the trial judge to about \$480,000. The original award, which was the amount asked for by the trial attorney in that case, was for one day's coffee sales in McDonalds restaurants. I don't think that that case really should be used as an example of a frivolous lawsuit and someone who was not taking responsibility for their own actions. That is probably the classic case of a corporation not heeding calls for insuring the safety of its product. Therein lies the problem. We currently live in a society that seems to be focused on better living through chemistry. Chemistry benefits us in

a number of ways, making products for home use that are disinfectants, that maybe reduce our exposure to harmful bacteria and molds, etc. We see food products that are necessary in terms of preservation, additives, etc. There is a good side to living with chemistry. But there is also a bad side. Rep. Delmore brought up the fact that if we had taken this sort of approach years ago, where would we be with regard to the tobacco lawsuits. We have had some individual tobacco lawsuits that have been successful. Getting back to this particular bill, I have two concerns. We have had no cases in ND, and I am the person that Rep. Koppelman mentioned that had been cited in the press as saying that this is a solution in search of a problem. The one case nationally from which the federal bill was introduced, has been dismissed. Our justice system works, our juries are capable of making these decisions about the merits of the case, and the other concern that the Trial Lawyers have, is that this creates an immunity for a special group of people and it is not in line with the principle of having equality in treating all equally under the law. We are creating a special exemption for producers and marketers, etc. We're not looking forward into the future as to the possible harmful effects of things like genetically modified products, chemical additives that may later show unintended health consequences.

**Representative Bernstein:** You brought up genetically modified foods. But where in this bill is that addressed.

**Paula Grosinger:** That's perhaps the flaw in the bill, in that this is a very broadly written bill, and it doesn't specifically mention an immunity for GMO, you're providing a very broad immunity.

**Representative Koppelman:** You obviously track these things both here in our state and nationally. I know that other states, including our sister state, SD, has adopted legislation

similar to this last year, have the Trial Lawyers Associations in those states, or the national organization oppose that legislation as well. Is it being defeated, is it found to be successful in other states.

**Paula Grosinger:** First with regard to the National Association of Trial Lawyers of America, they are opposing this type of legislation because the feeling is that there are adequate laws to cover these circumstances already on the books in all states and federally; and the state organizations in the states where this legislation has been introduced, have been opposing it. The feeling is that there's been a knee-jerk response to the one lawsuit that garnered all the attention, which was brought against McDonalds. Again, this is more of a response to something that's been in the media than a response to something that is in reality, a problem in our judicial system.

**Representative Klemin:** Section 4 of this bill on page 2, looks like it's retroactive and would apply to any lawsuit that's already been filed, if this becomes effective.

**Paula Grosinger:** Like other legislation that would impact cases which are already pending, it seems that that is a very unfair imposition on people who have already been harmed and who have gone through the trouble and expense of bringing forward a case and basically would have the rug pulled out from under them by this legislation. We feel that even if you passed the rest of the bill, that that particular section would be one that would be problematic and should be stricken.

**Representative Galvin:** I don't see the connection between the McDonalds hot coffee thing, which is a personal injury and this seems to be a nutritional thing.

**Paula Grosinger:** You're right, there isn't any direct connection between the bill, I only raised it because it was raised by Representative Koppelman as an example of the litigious nature of our

society and the plethora of frivolous lawsuits, when in fact that was not a frivolous lawsuit. It was an example of a corporation ignoring safety concerns that had been raised over 700 times before.

**Chairman DeKrey:** Thank you. Further testimony in opposition to HB 1241.

**Jeff Weikum, ND Trial Lawyers Association Executive Committee:** Our law firm is dedicated to making sure that the rights of the injured individuals are prosecuted. One important thing to remember is the term, responsibility. I agree. Responsibility is an underlying theme in everything that we do. It is always a concern when you take an individual or class of individual, or class of entities and basically set them above the law in an immunity type of statute. It allows them to do, is the social responsibility that keeps us all in line, and would hopefully be there anyway, is taken away. That is a concern with the statute. This bill is so broad, so it doesn't require them to have that moral responsibility from the statutory standpoint. One of the broad points is in section 1, talking about weight gain, obesity or health condition associated with weight gain or obesity. As we all know, there are a number of different health conditions which can arise, that are in some way related to obesity; cancer, diabetes, heart condition, blood pressure conditions and if this statute is enacted, the defenses in a lot of cases are going to be scouring that portion of it and looking at how can they tie the problems that are complained about by the injured party to that, or to foods, therefore getting an immunity for that. That is a big concern. I understand what we're trying to do. This bill is really broad. There are weight gain issues that are to the positive, such as dealing with young children, babies or with the elderly, such as Ensure. This will give immunity for these types of problems, as well. Moving to Section 2, basically talking about what is required in order to bring a complaint of this nature, that's

where it talks that the attorney and plaintiff need to make sure that there was a statute, rule, or ordinance that was violated, it was intentionally violated, that you need to plead that. This sets a much higher standard for a plaintiff who has this type of injury, than what a normal plaintiff would have to go through. Rule 11 of the ND Rules of Civil Procedure, talks about what as an attorney I have to do to make sure that I'm not bringing a frivolous lawsuit, or there will be sanctions imposed against me. This is a step up and beyond that. It is a hurdle there solely for type of defense. I have been practicing plaintiff's law for 10 years. Money drives everything, we need checks and balances.

**Representative Onstad:** If this type of legislation is passed, then fast foods can put their eat more spice in the hamburgers and take out the anti-weight gain pill and they'd be held not responsible.

**Jeff Weikum:** I think as long as it didn't qualify as fraudulent, or the intentional nature that we're talking about there, and as long as it was okayed by the Food and Drug Admin., that is what they could do. I'm not saying they will, I don't know; but that allows them to do this and you're really trusting them that they will act in our best interests.

**Representative Koppelman:** Does your organization or have you in the past, have you opposed the other tort reform that's been enacted in ND in the last decade, some of which has protected farmers and ranchers.

**Jeff Weikum:** I am opposed to allowing people to avoid being held accountable for their actions.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Karen Ehrens, ND Dietetic Association:** I am asking that you oppose HB 1241. More than 64% of us in ND, who weigh more than what is healthy for us to weigh. By the time our students graduate from high school, 9% are overweight, and another 11% are at risk of becoming overweight. We aren't against personal responsibility, just this bill. There are many categories of obesity. Children are watching over 10,000 food commercials in a year. That's about 28 messages that our kids are getting everyday to eat things like highly sweetened cereals, candy, chips, pop. There aren't messages against the 28 messages to eat those foods, to eat more nutrition foods. Parents should bear more of the responsibility of feeding our children, but how can we compete. We don't want to see our producers, etc. in a frivolous lawsuit. Only one of these cases has made it through the court. I think in ND we are less likely to pursue this type of litigation. We urge the committee to not support the bill, instead encourage you to use your time and energy to support legislation regarding nutrition and physical activity, education and programs that will help the epidemic of obesity, and make good public policy.

**Representative Koppelman:** I agree with most of what you've said; that our society makes poor choices, etc. How do you feel this would help or endanger people.

**Karen Ehrens:** My point is to show that there are many causes of obesity. We don't agree with the bill, in that people do need to take personal responsibility, but because of the environment and all of these different causes of obesity, that we need to work harder to address the other problems that cause obesity.

**Chairman DeKrey:** Thank you. Further testimony in opposition to HB 1241. We will close the hearing.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1241

House Judiciary Committee

Conference Committee

Hearing Date 1/19/05

Tape Number	Side A	Side B	Meter #
2		XX	20.7-36.8

Committee Clerk Signature



Minutes: 13 members present, 1 member absent (Rep. Maragos).

**Chairman DeKrey:** What are the committee's wishes in regard to HB 1241.

**Representative Koppelman:** I have amendments. The first part of the amendment puts processors, as well as livestock producers and food producers to the list, and the second thing this amendment does, removes the retroactivity, which is in the last section of the bill. It was not my intent to be retroactive, that was language picked up from another state. There is also a grammatical correction. I move the amendments.

**Representative Boehning:** Second.

**Chairman DeKrey:** The motion for the Koppelman amendments has been made and seconded.  
Motion carried.

**Representative Boehning:** I move a Do Pass as amended on HB 1241.

**Representative Bernstein:** Second.

**9 YES 4 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Klemin**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1241

Page 1, line 1, after the first comma insert "processor,"

Page 1, line 6, after the second comma insert "processor,"

Page 2, line 14, after "proceedings" insert "must be"

Page 2, line 24, remove "all covered claims pending on the"

Page 2, line 25, remove "effective date of this Act and" and after the second "Act" insert a  
comma

Renumber accordingly

VX  
1/20/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1241 JUD 1-20-05

Page 1, line 1, after the first comma insert "processor,"

Page 1, line 6, after the second comma insert "processor,"

HOUSE AMENDMENTS TO HB 1241 JUD 1-20-05

Page 2, line 14, after "proceedings" insert "must be"

Page 2, line 24, remove "all covered claims pending on the"

Page 2, line 25, remove "effective date of this Act and"

Renumber accordingly

Date: 1/19/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1241

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass as Amended*

Motion Made By *Rep. Boehning* Seconded By *Rep. Bernstein*

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore		✓
Representative Maragos	A		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad		✓
Representative Boehning	✓		Representative Zaiser		✓
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar		✓			

Total (Yes) 9 No 4

Absent 1

Floor Assignment *Rep. Klemin*

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1241: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1241 was placed on the Sixth order on the calendar.

Page 1, line 1, after the first comma insert "processor,"

Page 1, line 6, after the second comma insert "processor,"

Page 2, line 14, after "proceedings" insert "must be"

Page 2, line 24, remove "all covered claims pending on the"

Page 2, line 25, remove "effective date of this Act and"

Renumber accordingly

2005 SENATE JUDICIARY

HB 1241

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1241

Senate Judiciary Committee

Conference Committee

Hearing Date March 2, 2005

Tape Number	Side A	Side B	Meter #
1	X	X	6034 - End 0.0 - 4300

Committee Clerk Signature

*Maria L. Solberg*

Minutes: Relating to the "fat people" bill.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Rep. Kim Koppelman**, Dist. #13 Introduced the bill (meter 6050) Gave Testimony - Att. #1

This is the "common sense consumption bill". It is time for personal responsibility.

**Senator Triplett** asked if **Rep. Koppelman** was aware of any lawsuits pending. No, I am not aware of any cases. In ND we have been on the forefront of things and other states have followed us. Discussion of the wrong information and the actual opinion in the Mc Donald's coffee case. This is an urban legend. Have you discussed this with Ted Gladden or the Bar Assoc. on Section 3? Mr. Gladden did research on the rules of civil procedures and this would not be in conflict to it.

**Rep. Ron Iverson**, Dist. #27, (meter 350) Gave Testimony - Att. #2

**Sen. Trenbeath** questioned Mr. Iverson stating that aren't we saying we do not trust ND citizens to sit in a jury box and make the decision? This is legislation to "head off" the issue. Mr. Bohnzoft is looking for a venue, we are sending him a message. Discussed the documentary "Super Size Me".

**Senator Triplett** asked about if a product we are currently think is safe, for example hydrogenated fats, and find later that it is dangerous, then we may not sue them. Discussion of safe and legal and knowingly deceiving people. **Rep. Koppelman** responded by reading the part of the bill page 1, section 1, item 2, reviewed A & B. MN among several other states have adopted this legislation.

**Rep. Blair Thoreson**, Dist. #44 (meter 1091) Gave Testimony - Att. #3

**Nicki Weissman**, Executive Dir. of the ND Hospitality Assoc. (meter 1509) Gave Testimony - Att. #4.

**Eric Aasmundstad**, Pres. ND Farm Bureau (meter 1617) Gave Testimony - Att. #5

**David Straley**, ND Chamber of Commerce (meter 1870) Gave Testimony - Att. #6. **Sen.**

**Trenbeath** commented that Mr. Straley was the first person who did not bring up the word "frivolous" and probably is aware of what it means.

**Bill Butcher**, NFIB State Director after pooling our members, approx. 3,000 small business members, we are in support of this legislation.

#### **Testimony in Opposition of the Bill**

**Paula Grosinger**, ND Trial Lawyers Assoc. (meter 2150) Gave Testimony - Att. #7

**John Risch**, United Transportation Union (meter ) We are against all laws that limit liability.

**Jill Leppert**, Registered Dietitian. (meter 3590) Gave Testimony - Att. #8.

Page 3  
Senate Judiciary Committee  
Bill/Resolution Number HB 1241  
Hearing Date March 2, 2005

**ND Dietetic Assoc.** - Submitted Testimony - Att. #9

**Amendments** submitted by Paula Grosinger, ND Trial lawyers Assoc. - Att. #10.

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

**Senator Hacker** made the motion to amend ending the bill at "obesity" line 12, **Senator**

**Triplett** seconded the motion. All members were in favor and motion passes.

**Senator Triplett** made the motion to DO NOT Pass as Amended and **Sen. Nelson** seconded the motion. All were in favor, except for **Senator Syverson**. Motion passes.

Carrier: **Sen. Traynor**

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

Date: 3/2/05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. ~~SB~~ HB 1241

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Amend to stop at obesity 13+14  
or line 12

Motion Made By

Seconded By

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓	
Senator Syverson	✓		Senator Triplett	(2)	✓	
Senator Hacker	✓					
A. Trenbeath	✓					

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3/2/05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. ~~SB~~ HB 7241

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Not Pass As Amended

Motion Made By

Seconded By

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson	(2)	✓	
Senator Syverson		✓	Senator Triplett	(1)	✓	
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes)

5 No

1

Absent

0

Floor Assignment

Trenbeath

If the vote is on an amendment, briefly indicate intent:

Date: 3/7/  
Roll Call Vote #:

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1241

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Reconsider Action*

Motion Made By Senator *Traynor* Seconded By Senator *Hacker*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3/7/05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1241

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Delete Section #3 13-23 + renumber

Motion Made By Senator Traynor Seconded By Senator Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3/7/05  
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1241

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Amund Delete 9-12 on pg 2*

Motion Made By Senator *Trenbeath* Seconded By Senator *Triplett*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3/7/05  
Roll Call Vote #: 4

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1241

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Senator Trenbeath. Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Traynor		✓	Sen. Nelson	✓	
Senator Syverson		✓	Senator Triplett	✓	
Senator Hacker		✓			
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3/7/05  
Roll Call Vote #: 5

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1241

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass As Amended*

Motion Made By Senator *Traynor* Seconded By Senator *Hacker*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓
Senator Syverson	✓		Senator Triplett		✓
Senator Hacker	✓				
Sen. Trenbeath		✓			

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3/7/05  
Roll Call Vote #: 6

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1241

Senate Judiciary

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *No Recommendation*

Motion Made By Senator *Tren* Seconded By Senator *Hack*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment *Triplett*

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

HB 1241, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (3 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1241 was placed on the Sixth order on the calendar.

Page 1, line 12, after the third comma insert "or"

Page 1, line 13, replace ", or other generally known condition allegedly caused by" with a period

Page 1, remove line 14

Page 2, line 1, remove "1."

Page 2, line 3, replace "a." with "1."

Page 2, line 5, replace "b." with "2."

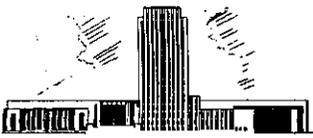
Page 2, line 7, replace "c." with "3."

Page 2, remove lines 9 through 23

Renumber accordingly

2005 TESTIMONY

HB 1241



# NORTH DAKOTA HOUSE OF REPRESENTATIVES



Representative Kim Koppelman  
District 13  
513 First Avenue NW  
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COMMITTEES:  
Judiciary  
Political Subdivisions  
Constitutional Revision, Chairman

## Testimony on House Bill 1241 by Rep. Kim Koppelman before the House Judiciary Committee 1-17-05

Mr. Chairman and Members of the House Judiciary Committee, for the record, I am Rep. Kim Koppelman and I represent District 13, which consists of most of the city of West Fargo.

Certainly, the litigious nature of our society is not news to any of us. Nearly every day, we hear reports of people suing others, often in an attempt to right a wrong which could have been prevented by those doing the suing, themselves.

Examples include a law suit against a fast food chain, because a customer ordered coffee and spilled it in the car, and it was actually hot. Imagine that! A more recent trend is holding others responsible for various conditions, such as being overweight, rather than taking responsibility, ourselves. House Bill 1241 seeks to address issues such as this.

While obesity is a growing problem in our nation and one which needs to be addressed, suing McDonald's because you ate too many "Big Macs" is simply the wrong approach. We must take responsibility for our own actions, rather than blaming someone else, particularly when we bring problems on, ourselves.

House Bill 1241 not only addresses this kind of issue, it also protects some of North Dakota's most important industries from such frivolous lawsuits. These include agricultural producers and trade associations. Sadly, it is probably only a matter of time until someone sues a cattle rancher, a hog farmer or an organization like the pork producers because they suffered a heart attack, after choosing a steady diet of their products.

Some will tell you, as they've already told the media, that this is a "solution in search of a problem", pointing out that we haven't had a rash of these kinds of lawsuits in North Dakota. It's true that we haven't, and we want to make sure that we don't. It is the job of the legislature to make good public policy and that's exactly what House Bill 1241 is.

Mr. Chairman and Members of the Committee, it's simply time for personal responsibility and common sense. It's time we all take responsibility for our own actions, rather than blaming others or trying to win the lottery in a court of law. I urge your support of House Bill 1241 and would be glad to attempt to answer any questions.

**Testimony on HB 1241  
House Judiciary Committee  
Duane DeKrey, Chairman  
Monday, January 17, 2005**

Mr. Chairman and members of the House Judiciary Committee, I am Representative Blair Thoreson, representing District 44 from the city of Fargo.

House Bill 1241 is a bill that I wish would have never have been needed to be introduced. But, as we know, our country has become one filled with frivolous lawsuits. Others today will give examples of legal actions that seem silly. We've all heard about these cases, since they seem to generate endless fodder for a 24/7/365 media that hungers for stories like a starving "legislator of size" (as I have been tagged by the Associated Press) hungers for a burger and fries!

This bill aims to curb the appetite of a legal system filled with "junk" lawsuits, which target the so-called "junk" food providers. In addition, it adds protections for North Dakota producers that provide a vital part of our economy, and industry organizations that represent them.

Mr. Chairman and members of the committee, I certainly could be one that blames restaurants and big food companies for being the size that I am. This would be an easy excuse. However, the real reason is because...I like to eat! It's not someone else's fault that I'm large. It's because I need to make smarter choices when eating, and to exercise more.

In the past year, I've taken these ideas to heart, and by doing so have lost a significant amount of weight. I still go to the fast-food restaurants, but I've learned to watch the size of the portions and to choose healthier menu items while there. I've not found a place yet that does not offer me these better choices. The food industry has responded to customers, who like me, request healthier food. They know that their future success will be built on offering a wide variety of foods for a discriminating public.

These are positives change that are happening now, and by forcing these companies to spend millions of dollars defending themselves in court will only hamper their ability to independently make these changes. By passage of HB 1241, we can help put a stop to this unnecessary "regulation through litigation" (as this new phenomenon has been named) and again focus on being responsible for our own actions. I ask this committee for a "DO PASS" recommendation on the bill, and to once again put the focus back on our own actions.

Thank you, Mr. Chairman.



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**North Dakota Farm Bureau**

[www.ndfb.org](http://www.ndfb.org)

**Testimony of North Dakota Farm Bureau  
House Bill 1241  
House Judiciary Committee  
January 17, 2005**

**Eric Aasmundstad, President**

Good morning Mr. Chairman. My name is Eric Aasmundstad; I'm here representing the 27,000 member families of North Dakota Farm Bureau.

North Dakota Farm Bureau supports House Bill 1241. Personal responsibility is central to the Farm Bureau beliefs. It would seem to me that we have reached a sad state of affairs when legislation has to be proposed to protect our food producing, manufacturing, and marketing entities from legal action for obesity. But the realities are this legislation is needed to protect our food chain from ridiculous action by those that cannot control their appetites or whims. How have we come to being able to take legal action against companies for our inability to control our own actions? North Dakota Farm Bureau thinks actions of this nature are ludicrous. Legislation seems to be needed to prevent these frivolous actions in the absence of personal responsibility, and we support it.

Thank you, I would entertain any questions.

# North Dakota Dietetic Association

January 17, 2004

Testimony, HB 1241

Chairman DeKrey and Members of the Judiciary Committee:

Good morning, my name is Karen Ehrens. I am a Licensed, Registered Dietitian (LRD) and appear before you today on behalf of the North Dakota Dietetic Association asking you not to pass HB 1241.

Obesity has reached what has been called an epidemic; more than 64% of North Dakota adults are overweight or obese.<sup>1</sup> What is even more alarming is that by the time they graduate from high school, 9% of North Dakota students are overweight and 11% are at risk of becoming overweight.<sup>2</sup>

Because the more than 280 members of our organization are against the passage of this bill does not mean that we negate personal responsibility in the choices of what we put into our mouths. The causes of obesity are many and complex. Please review the chart that shows what a brainstorming session by members of my profession put together as an incomplete list. But to say that obesity is solely a matter of personal responsibility, that it is a matter of just putting down your fork, ignores a body of science about how behaviors are learned.

Americans and America's children are increasingly obese in some part because of personal responsibility but also because of genetic factors and learned behaviors in addition to poor public policies and the environment in which we live. We don't live in a vacuum, but are influenced by our environment.

I would like to especially focus on the environment in which our children are being raised. The average child in the United States sees 10,000 food commercials a year, most of which are for unhealthy foods<sup>3</sup>. Overall food advertising and promotional expenditures were \$26 billion in 2000.<sup>4</sup> To contrast, the national 5 A Day program, a public/private partnership, had a communication budget for fiscal year 2003 of only \$3.5 million. Parents can and should bear most of the responsibility for feeding their children, but how can we compete?

The Registered Dietitians of the NDDA are on the front lines assisting adults and children struggle to lose or even just to maintain weight. Any of you who have gained weight and tried to lose it know that it is a "losing" battle; indeed those who are lucky enough to lose weight, on average, can maintain only 3% to 6% of initial body weight lost after 4-5 years.<sup>5</sup>

The Registered Dietitians of the NDDA do not want to see our agricultural producers or local Pride of Dakota companies or food distributors sued in a frivolous lawsuit. Is it not true that courts to date have not allowed any of these frivolous "cheeseburger" suits to come to fruition? And are North Dakotans less likely than those in other states to sue for frivolous reasons? And so we ask, why place this unnecessary law on the books?

The LRD's of the North Dakota Dietetic Association urge the committee not to support this bill, but instead encourage the North Dakota Legislature to use your time and energy to support nutrition and physical activity legislation, education, and programs that will help fight this epidemic of obesity.

Writing for the Board of the North Dakota Dietetic Association,



Karen K. Ehrens, LRD

#### References

1. North Dakota Behavioral Risk Factor Surveillance Survey, 2003.
2. North Dakota youth Risk Behavior Survey, 2003.
3. Taras, HL, and Gage M. Advertised Foods and Children's Television, *Archives of Pediatric and Adolescent Medicine*, volume 149, 1995, pp.649-652, as quoted in *Pestering Parents: How Food Companies Market Obesity to Children*; Center for Science in the Public Interest, 2003, <http://cspinet.org/new/pdf/pesteringparentsnopictures.pdf>.
4. Elitzak H. "Food Marketing Costs at a Glance." *FoodReview* 2001, vol. 24, no. 3, pp. 47-48. as quoted in *Pestering Parents: How Food Companies Market Obesity to Children*; Center for Science in the Public Interest, 2003, <http://cspinet.org/new/pdf/pesteringparentsnopictures.pdf>.
5. Anderson JW, Kontz EC, Frederich RC, Wood CL. Long-term weight-loss maintenance: a meta-analysis of US Studies. *American Journal of Clinical Nutrition*, 2001; 74:579- 584.



GROCERY MANUFACTURERS OF AMERICA  
LEADERS OF THE WORLD'S FAVORITE BRANDS OF  
FOOD, BEVERAGES, AND CONSUMER PRODUCTS

1000 G Street, N.W.  
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Fax: 202-462-2001  
www.gma.org

January 15, 2005

The Honorable Kim Koppelman  
House Judiciary Committee  
Capitol, 600 East Boulevard Avenue  
Bismarck, ND 58505-0360

Dear Representative Koppelman:

GMA thanks you for your sponsorship of House Bill 1241 which would prevent frivolous lawsuits against the food industry for claims that certain food products were the sole cause of an individual's obesity or health condition related to weight gain.

Grocery Manufacturers of America (GMA) is the world's largest association of food, beverage and consumer product companies. Led by a board of 46 Chief Executive Officers, GMA applies legal, scientific and political expertise from its more than 140 member companies to vital public policy issues affecting its membership. With U.S. sales of more than \$500 billion, GMA members employ more than 2.5 million workers in all 50 states, including 1,000 employees at 12 locations in North Dakota.

GMA and its member companies are committed to seeking comprehensive solutions to the obesity epidemic. We believe, as do many nutrition experts, that solving the obesity problem is about maintaining a healthy lifestyle and achieving the proper energy balance. The rise in obesity is the result of many complex factors affecting eating and activity behaviors and there are no simple solutions.

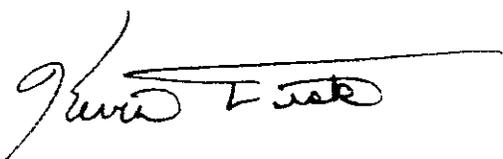
Litigation filed against the food industry does not address the core issues of nutrition education and physical activity, rather, it directs attention away from efforts to develop and market a broad range of foods that meet consumer's health and wellness needs. Moreover, frivolous lawsuits threaten jobs, raise the cost of participation in the food business, and ultimately raise prices that consumers pay. Recognizing this, Arizona, Colorado, Florida, Georgia, Idaho, Illinois, Louisiana, Michigan, Missouri, Ohio, South Dakota, Tennessee, Utah and Washington have already enacted similar legislation.

HB 1241 is narrowly focused. It simply provides protection from abusive suits seeking to blame the food industry for an individual's dietary choices. The bill

does not protect companies that are guilty of product adulteration or misbranding.

For these reasons, GMA supports House Bill 1241. Please contact me at (202) 295-3925 or [kfisk@gmabrands.com](mailto:kfisk@gmabrands.com) if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Fisk", with a long horizontal line extending to the right from the end of the signature.

Kevin Fisk  
Manager, State Affairs

**Koppelman, Kim A.**

**From:** Amanda Conochalla [AConochalla@darden.com]  
**Sent:** Wednesday, January 19, 2005 8:38 AM  
**To:** Koppelman, Kim A.  
**Subject:** FW: HB 1241- Obesity Lawsuit Bill



Dear Representative Koppelman:

Darden Restaurants the parent company of Red Lobster, Olive Garden, Bahama Breeze and Smokey Bones urges you to **support HB 1241**, which would protect restaurants from facing civil liability lawsuits arising from health claims based on the long-term consumption of food.

Lawsuits are not the way to address the obesity problem. More than half of all meals are eaten in the home and not in restaurants. The restaurant industry is working with government officials, local charities, and health organizations to raise awareness and funding to fight the obesity problem.

Furthermore, the general public feels that frivolous obesity lawsuits are a waste of taxpayer dollars and are ridiculous. In a July 2003 Gallop Poll, over 89% of the people polled felt that the food industry should not be blamed for issues related to obesity and weight gain.

We believe healthy eating is best promoted by educating the public about a healthy lifestyle, thereby allowing consumers to make educated decisions about their own eating. Restaurants should not be punished for providing foods that are requested by our guests.

One of these bills is expected to reach the House floor the week of April 5 or 12 and I need your support. Again, **I urge you to support HB 1241** and protect North Dakota's restaurants during these uncertain economic times.

Sincerely,

**Amanda Conochalla**  
Government & Community Affairs  
Darden Restaurants Inc.  
5900 LK Ellenor Dr., Orlando, FL 32809  
P 407-245-4702 /F 407-245-4462  
aconochalla@darden.com

AH #1

# NORTH DAKOTA HOUSE OF REPRESENTATIVES



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COMMITTEES:  
Judiciary  
Political Subdivisions  
Constitutional Revision, Chairman

## Testimony on House Bill 1241 by Rep. Kim Koppelman before the Senate Judiciary Committee 3-2-05

Mr. Chairman and Members of the Senate Judiciary Committee, for the record, I am Rep. Kim Koppelman and I represent District 13, which consists of most of the city of West Fargo.

Certainly, the litigious nature of our society is not news to any of us. Nearly every day, we hear reports of people suing others, often in an attempt to right a wrong which could have been prevented by those doing the suing, themselves.

Examples include a law suit against a fast food chain, because a customer ordered coffee and spilled it in the car, and it was actually hot. Imagine that! A more recent trend is holding others responsible for various conditions, such as being overweight, rather than taking responsibility, ourselves. House Bill 1241 seeks to address issues such as this.

While obesity is a growing problem in our nation and one which needs to be addressed, suing McDonald's because you ate too many "Big Macs" is simply the wrong approach. We must take responsibility for our own actions, rather than blaming someone else, particularly when we bring problems on, ourselves.

House Bill 1241 not only addresses this kind of issue, it also protects some of North Dakota's most important industries from such frivolous lawsuits. These include agricultural producers and trade associations. Sadly, it is probably only a matter of time until someone sues a cattle rancher, a hog farmer or an organization like the pork producers because they suffered a heart attack, after choosing a steady diet of their products.

Some may tell you, as they told the media and the House Judiciary Committee, that this is a "solution in search of a problem", pointing out that we haven't had a rash of these kinds of lawsuits in North Dakota. It's true that we haven't, and we want to make sure that we don't. It is the job of the legislature to make good public policy and that's exactly what House Bill 1241 is.

Mr. Chairman and Members of the Committee, it's simply time for personal responsibility and common sense. It's time we all take responsibility for our own actions, rather than blaming others or trying to win the lottery in a court of law. I urge your support of House Bill 1241 and would be glad to attempt to answer any questions.

Testimony to the  
North Dakota Senate Judiciary Committee  
March 2<sup>nd</sup> 2005  
HB 1241

Chairman Traynor and Members of the Senate Judiciary Committee. For the record my Name is Ron Iverson and I represent District 27 which is comprised of southwest Fargo and parts of West Fargo.

Committee Members this bill before you is a cure to a Problem. That problem being Frivolous Lawsuits brought about by venue shopping Trial Lawyers. I do not believe that all lawyers are unscrupulous or incompetent, Far from it. The overwhelming majority of lawyers are good, kind and seek the best for their clients. This bill comes before you for one simple reason to stop those who do not seek the best for their clients. These are the lawyers who would seek to perpetuate the cult of victimology when there isn't one.

I stand before you a FAT MAN. Yes it is true I am fat. But I have allowed myself to become fat. Is that the fault of Wendy's, McDonalds, Burger King, Taco Bell, Pizza Hut, Taco John's, Krispy Kreme, TGIFridays, Valentino's or a host of other restaurants that serve good tasting food. The answer is NO. I have the power to control what and when and how much I eat.

There is an attorney named John Bahnzaf. Mr Bahnzaf wants to do the same to the Fast food industry as he has done to others but it doesn't stop there his agenda would stretch

all the way to the rancher who produces the cow or chicken that the fast food industry uses.

Mr Bahnzaf Stated "Somewhere there is going to be a judge and jury who is going to buy this and then the floodgates will open" he is referring to money that this and the ag industry will pay to lawyers and Victims who claim they got fat because of the food they eat.

*You are not a victim.*

I along with several others will ask you to stop the venue shopping and tell mr Bahnzaf to look elsewhere for his "floodgate".

I will answer any questions the committee has.

#3

**Testimony on HB 1241**

**By Rep. Blair Thoreson**

**Senate Judiciary Committee**

**John T. Traynor, Chairman**

**Wednesday, March 02, 2005**

Mr. Chairman and members of the Senate Judiciary Committee, I am Representative Blair Thoreson, representing District 44 from the city of Fargo.

House Bill 1241 is a bill that I wish would have never have been needed to be introduced. But, as we know, our country has become one filled with frivolous lawsuits. We've all heard about these cases, since they seem to generate endless fodder for a 24/7/365 media that hungers for stories like a starving "legislator of size" (as I was tagged by a reporter earlier in this session) hungers for a burger and fries!

This bill aims to curb the appetite of a legal system filled with "junk" lawsuits, which target the so-called "junk" food providers. In addition, it adds protections for North Dakota producers that provide a vital part of our economy, and industry organizations that represent them.

Mr. Chairman and members of the committee, I certainly could be one that blames restaurants and big food companies for being the size that I am. This would be an easy excuse. However, the real reason is because...I like to eat! It's not someone else's fault that I'm large. It's because I need to make smarter choices when eating, and to exercise more.

In the past year, I've taken these ideas to heart, and by doing so have lost a significant amount of weight. I still go to the fast-food restaurants, but I've learned to watch the size of the portions and to choose healthier menu items while there. I've not found a place yet that does not offer me these better choices. The food industry has responded to customers, who like me, request healthier food. They know that their future success will be built on offering a wide variety of foods for a discriminating public.

These are positives change that are happening now, and by forcing these companies to spend millions of dollars defending themselves in court will only hamper their ability to independently make these changes. By passage of HB 1241, we can help put a stop to this unnecessary "regulation through litigation" (as this new phenomenon has been named) and again focus on being responsible for our own actions. I ask this committee for a "DO PASS" recommendation on the bill, and to once again put the focus back on our own actions.

Thank you, Mr. Chairman.



*ND's Restaurant, Lodging &  
Beverage Association*

P.O. Box 428 • Bismarck, ND 58502 - Phone: 701-223-3313 • Fax: 701-223-0215  
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ND Hospitality Association Testimony  
Senate Judiciary Committee  
House Bill # 1241

Mr. Chairman and members of the committee, my name is Nicki Weissman and I and the Executive Director of the ND Hospitality Association. The 400 plus members of the association are in support of House Bill 1241. Bill 1241 provides protection for quick service restaurants, cafeterias, full service restaurants, and bars from frivolous lawsuits. Our goal is to provide food that is good tasting and good for you, no necessarily in the same item. The ND Hospitality Association and the National Restaurant Association believes in providing customer choice in the quality of our food and because it is a customer choice of what to eat, we should not be labile for weight gain, obesity problems or other health effects that may result.

No one should have the right to pursue a injury claim which was caused by over indulging in repeated amounts of wonderful food.

Mr. Chairman and committee members the ND Hospitality Association supports HB 1241 and we would encourage a DO PASS.

Thank you for your time, I would be happy to answer any questions.



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Att #5

**North Dakota Farm Bureau**

[www.ndfb.org](http://www.ndfb.org)

**Testimony of North Dakota Farm Bureau  
House Bill 1241  
Senate Judiciary Committee  
March 2, 2005**

**Eric Aasmundstad, President**

Good morning Mr. Chairman. My name is Eric Aasmundstad; I'm here representing the 27,500 member families of North Dakota Farm Bureau.

North Dakota Farm Bureau supports House Bill 1241. Personal responsibility is central to the Farm Bureau beliefs. It would seem to me that we have reached a sad state of affairs when legislation has to be proposed to protect our food producing, manufacturing, and marketing entities from legal action for obesity. But the realities are this legislation is needed to protect our food chain from ridiculous action by those that cannot control their appetites or whims. How have we come to being able to take legal action against companies for our inability to control our own actions? North Dakota Farm Bureau thinks actions of this nature are ludicrous. Legislation seems to be needed to prevent these frivolous actions in the absence of personal responsibility, and we support it.

Thank you, I would entertain any questions.



GREATER  
NORTH DAKOTA  
CHAMBER OF COMMERCE

**Testimony of David Straley  
Greater North Dakota Chamber of Commerce  
Presented to the  
Senate Judiciary Committee  
March 2, 2005**

**HB 1241**

Mr. Chairman and members of the Senate Judiciary Committee, my name is David Straley. I represent the Greater North Dakota Chamber of Commerce and a business coalition which includes seventeen area chambers of commerce in North Dakota with over 7,400 member businesses to urge you to **support** Engrossed House Bill 1241.

The business community supports Engrossed HB 1241 because it would place some responsibility on the consumer. We feel that everyone should take responsibility for their actions and this would help prevent unnecessary litigation. Although we are unsure if there have been any claims filed in North Dakota thus far, our goal would be to keep that from ever happening and this bill would do just that.

Thank you, Mr. Chairman and members of the Senate Judiciary Committee, for this opportunity to discuss the business community's position on Engrossed HB 1241. We urge a **DO PASS** for Engrossed HB 1241. Thank you and I would be happy to answer any questions at this time.

**The following chambers are members of a coalition that support our policy statements:**

Beulah  
Bismarck-Mandan  
Bottineau  
Cando  
Crosby  
Devils Lake  
Dickinson  
Fargo  
Grand Forks  
Greater North Dakota Chamber of Commerce  
Hettinger  
Jamestown  
Langdon  
Minot  
Wahpeton  
Watford City  
West Fargo  
Williston

Total Businesses Represented= 7429

Att #4

**Testimony on HB 1241**

**Presented to Senate Judiciary Committee, Senator Traynor Chair**

**By Paula Grosinger, Lobbyist 114, ND Trial Lawyers Association 701-202-1293**

**March 2, 2005**

Any legislation which limits civil liability and prevents an injured party from pursuing a claim is "tort reform" legislation. Such legislation undermines the Seventh Amendment to the Constitution of the United States of America and contradicts the idea that a jury of peers is capable of rendering a decision about the merits of an injured party's claim. "Tort reform" legislation usually arises because a defendant or group of defendants has been held accountable for harm they caused, or wants to ensure they will not be held accountable for harm they may cause.

The notion that benevolent corporations and the marketplace will adequately address consumer safety and public safety concerns has repeatedly been proven false. Corporations like Phillip Morris (Altria), Ford Motor Company, R. J. Reynolds, W. R. Grace, and others have demonstrated that human costs in terms of death and injury are often outweighed by the drive to increase profits and satisfy shareholders.

We live in an age of "better living through chemistry." Technology has had a huge impact on our food supply, both positive and negative. Foods are processed using a host of chemical additives. Around 1997, a new technology radically altered the composition of food. Between 1997 and 1999, genetically-modified (GM) ingredients appeared in two-thirds of all processed foods in the United States. Yet, few consumers can name genetically modified ingredients or identify risks associated with GM foods.

The push to advance GM food technology and cash in on profit potential has also been behind some of the biggest mergers between food and agri-chemical companies in history. Along with this consolidation, there has been a lack of GM labeling, something the food industry worked hard to ensure was not required.

You have to take a crystal ball approach when you enact legislation. Future consequences and future products may result in harm to consumers. There was a time when tobacco was not considered particularly harmful. We later learned that tobacco companies manipulated the nicotine content of their product to ensure that new or occasional smokers became "hooked."

With regard to the risks associated with chemical additives and GM foods, much of the harm is not yet known. GM foods are largely unregulated and untested by the Food and Drug Administration which requests that firms conduct their own tests on new GM products. According to *Safety of Genetically Engineered Foods: Approaches to Assessing Unintended Health Effects* (The National Academies Press, 2004), the limitations in available data and current scientific knowledge present a major challenge in predicting and assessing adverse consequences from GM foods.

We know some of the potential risks associated with GM foods include new allergens, toxins, unknown protein combinations, and alterations to nutritional content. The worst possible scenario could result from horizontal gene transfer with the ultimate result that mutations could travel internally to cells, tissue and organ systems within the human body.

What does this have to do with fat, being obese, or having an obesity-related illness?

One of the potential risks associated with GM foods are food-related allergies. Frequently, foods we eat and crave are precisely those that test positive for food allergies. There are also GM foods specifically engineered as pesticidal foods that produce an interior toxin within the food cell. There is little known about the long-term health

impacts of foods with cell-interior toxicity, but a potential problem is that such foods could be toxic to certain segments of the population or cause adverse reactions to certain cells within the human body. In the event that a food caused an adverse reaction to the Beta cells of the Pancreas or to the human thyroid resulting in obesity or an obesity-related illness, this bill would immunize the manufacturer/producer.

We can't say specifically that GM foods will cause obesity or obesity-related illness because of some allergic, toxic or mutational factor. The technology is too new. I can say this bill grants too broad an immunity to food producers, manufacturers, processors and others who have wrought the biggest change in human food consumption ever in just the last eight years. This legislation will primarily benefit large corporations capitalizing on new genetically-modified products, while enjoying little oversight regarding the health consequences.

Perhaps we should call this the "**Organic Opportunity Bill**." As we continue to see more GM foods, more additives and supplements, and more legislation protective of corporations, organic food producers should seize the opportunity to promote their products as safe alternatives. Again, however, the public remains largely unaware of the prevalence of GM foods and the risks are unknown.

If this bill passes, it should be with an amendment requiring the labeling of all GM foods and food products, and all food additives in grocery products. Franchise and chain/licensed restaurant operations should be required, upon request, to provide a list of all the GM foods and food products served. In its current form, I urge a DO NOT PASS on HB 1241.

Att #8

**Senate Judiciary Committee**

**HB 1241**

**March 2, 2005**

Good morning Chairman Traynor and member of the Senate Judiciary committee. My name is Jill Leppert, I am a registered dietitian and I am here to speak in opposition of HB 1241.

I would like to make three points in my opposition.

1. All health experts agree that obesity is a very complex issue. Less than 10% of the people who have lost weight have long-term success in maintaining that weight loss. To describe obesity as a matter of self-control is a vast oversimplification and is a huge disservice to all of your constituents who have struggled with their weight. If obesity was a matter of self control the American public wouldn't spend \$32 billion a year on false weight loss products. And yet when asked to help prevent the problem of obesity in youth by providing more physical activity in schools and limiting access to high calorie beverages this legislative body seems to be turning a blind eye to helping prevent the problem.
2. There has been a comparison of the possibility of a class action lawsuit against fast food restaurants to the class action lawsuit against tobacco. But remember that the tobacco industry won these lawsuits for years, until tobacco was caught lying and ultimately they lost. So what if a year from now we find a fast food restaurant lied about the number of calories in their burger because they were afraid it would affect sales. One wonders, with the broad stroke of this legislation, would they be protected?
3. Looking at the past few week, it strikes me that the preferred practice of this legislative body is not to pass unneeded legislation. Whether it was increasing the age of children for life jackets or asking an employer to support a breastfeeding mother in the work place the rational for the defeat of both bills was the same. There had been no accidents regarding children not wearing a life jacket so the legislation is not needed. There are no employees who would not support breastfeeding in so the legislation is not needed. So isn't it true then that given there have been no lawsuits in North Dakota regarding obesity there is no need for this legislation. I am concerned that this bill sends a message that this legislative body values business over children and mothers and would urge a do not pass recommendation.



March 2, 2005  
Testimony, HB 1241

Chairman Traynor and Members of the Senate Judiciary Committee:

The 280 Licensed, Registered Dietitian (LRD) members of the North Dakota Dietetic Association ask that you do not pass HB 1241.

Obesity has reached what has been called an epidemic; more than 64% of North Dakota adults are overweight or obese.<sup>1</sup> What is even more alarming is that by the time they graduate from high school, 9% of North Dakota students are overweight and 11% are at risk of becoming overweight.<sup>2</sup> In North Dakota alone, obesity-related medical expenditures are estimated at \$209 million each year. We respectfully ask that you consider whether this piece of legislation will do anything improve this situation.

Because our organization members do not support this bill does not mean that we negate personal responsibility in the choices of what we eat. The causes of obesity are many and complex, and the personal decisions we make each day are one factor of many that determine body composition. What we eat each day is also influenced by what we see and hear each day. We don't live in a vacuum, but are influenced by our environment, which includes thousands of daily media messages.

I would like to especially focus on the environment in which our children are being raised. The average child in the United States sees 10,000 food commercials a year, most of which are for unhealthy foods<sup>3</sup> including highly-sugared cereals, foods with large amounts of fat and salt, and other foods which contribute a high number of calories (and little that builds health) to diets. Overall food advertising and promotional expenditures were \$26 billion in 2000.<sup>4</sup> To contrast, the national 5 A Day program, a public/private partnership that promotes consumption of fruits and vegetables, had a communication budget for fiscal year 2003 of only \$3.5 million.

Children's food choices and parents' purchasing choices **are** affected by advertising messages.<sup>5</sup> Given that food producers and manufacturers and sellers advertise to influence our food choices, do they not share in some part of responsibility for the current state of our health? If you agree that they do, then we respectfully ask that they not be given immunity from the responsibility that we all share as members of our society.

The Registered Dietitians of the NDDA do not want to see our agricultural producers or local Pride of Dakota companies or food distributors sued in a frivolous lawsuit. But given the myriad factors that contribute to obesity, we feel that the judicial system will be able to determine that any one person's body composition is not made by the actions or products of one single company or manufacturer. And so we ask you to consider the necessity of this legislation.

The LRD's of the North Dakota Dietetic Association urge the committee not to support this bill, but instead encourage the North Dakota Legislature to use your time and energy to support nutrition and physical activity policies, education, and programs that will help fight this epidemic of obesity.

Karen K. Ehrens, LRD writing for the Board of the North Dakota Dietetic Association.

#### References

1. North Dakota Behavioral Risk Factor Surveillance Survey, 2003.
2. North Dakota youth Risk Behavior Survey, 2003.
3. Taras, HL, and Gage M. Advertised Foods and Children's Television, *Archives of Pediatric and Adolescent Medicine*, volume 149, 1995, pp.649-652, as quoted in *Pestering Parents: How Food Companies Market Obesity to Children*; Center for Science in the Public Interest, 2003, <http://cspinet.org/new/pdf/pesteringparentsnopictures.pdf>.
4. Elitzak H. "Food Marketing Costs at a Glance." *FoodReview* 2001, vol. 24, no. 3, pp. 47-48. as quoted in *Pestering Parents: How Food Companies Market Obesity to Children*; Center for Science in the Public Interest, 2003, <http://cspinet.org/new/pdf/pesteringparentsnopictures.pdf>.
5. "The Role of Media in Childhood Obesity", Kaiser Family Foundation, February, 2004.

Proposed amendments for HB 1241  
submitted by Paula Grosinger, lobbyist ND Trial Lawyers Association  
701-202-1293  
2 March 2005

Page 1 Line 21 strike "Provided that the violation is knowing and willful.

Page 2 strike Lines 9-12.

Page 2. Strike all of Section 3. and replace as follows:

SECTION 3. Labeling required.

1. All commercially packaged grocery products including sold for human consumption in North Dakota must have labeling identifying genetically modified, transgenic, or genetically engineered ingredients, additives or components. Such labeling must indicate that health risks associated with genetically modified, transgenic or genetically engineered foods may include allergies, toxicity, reduced nutritional content and other unknown risks.
2. This section does not apply to products such as meat, dairy, eggs and produce sold directly by producers to consumers such as at farmer's markets or truck farms.
3. This section does not apply to unpackaged items sold in bulk including meats sold at meat counters.
4. All restaurants must provide a list of genetically modified, transgenic, or genetically engineered foods served at their premises upon request.