



BEYOND PESTICIDES

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Statement of

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On HB 2476, Permitting federal pesticide warning or labeling requirements
to satisfy any state pesticide warning or labeling requirements

House Committee on Agriculture and Natural Resources
Kansas House of Representatives
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Honorable Chairman and members of the committee.

We testify in opposition to HB 2476, *Permitting federal pesticide warning or labeling requirements to satisfy any state pesticide warning or labeling requirements*, and ask you to uphold a basic legal principle of marketplace protection on behalf of Kansas farmers and consumers

Beyond Pesticides was founded in 1981 and has worked with the agriculture community since its founding to advance sustainable practices and protections for those who use pesticides. The organization bridges the interests of farmers and consumers in ensuring a safe food production system. In this process we carefully follow the regulatory process, which is intended to protect pesticide product users and the communities in which they are used. As you know, pesticides are registered by the U.S. Environmental Protection Agency (EPA) and enforcement of the pesticide label is carried out under a cooperative agreement between EPA and the Kansas Department of Agriculture (KDA). Our position in opposition to HB 2476 is based on the knowledge that there are limited resources at all levels of government and the users of pesticides, including farmers and consumers, rely on a series of checks and balances that seek to ensure their safety and the safety of their families and their community.

Because of limited resources, farmers and consumers have always relied on the courts as an important element of the system of protection when they purchase and use a pesticide product. Since it was first determined that we should be able to use products that are inherently dangerous in a manner that does not cause undue harm to the handler or the community, farmers and consumers have relied on both the regulatory system and the courts to provide that protection. It has been long understood that the regulatory system alone could not offer full protection and that because of their inherently hazardous characteristics we needed to

incentivize the manufacturers of pesticide products to do their very best to keep people out of harm's way and—because of the nature of the materials—warn the users of potential product hazards.

It has long been held that chemical manufacturers are accountable for hazards associated with their products and have a duty to warn product users of the potential harm associated with their use. In this context, if the regulatory process is limited in any way, and we know that it has limits, the manufacturers are still responsible to disclose to the product user the hazards that may be associated with its use. The courts have ruled on this principle over our long history of pesticide regulation. For example, a 2005 Supreme Court decision, in *Bates v. Dow Agrosciences*, upheld the right of farmers in Texas, who followed the pesticide label and experienced crop loss, to sue for damages. The manufacturer lost their argument that because they registered their product with EPA, the farmers could not sue them. The principle supporting our opposition to HB 2476 is similar here. Those who suffer harm through no fault of their own should be able to sue for the manufacturer's failure to provide a warning on the product label.

The chemical industry is arguing that compliance with EPA labeling requirements should shield manufacturers from disclosing on the product label hazards that they knew about. If the manufacturer does not believe there is a potential hazard associated with the use of their product, then no label warning would be necessary. If, however, the manufacturer knows of a potential harm, then this committee and the state of Kansas should allow those harmed to hold manufacturers accountable for not disclosing that information.

This legislation is not about a specific pesticide. It is about a system of laws that have been established to protect farmers and consumers who use pesticides.

This legislation is before you today because the chemical industry has failed at the federal level to convince lawmakers that immunizing chemical manufacturers from a failure to warn lawsuit is truly in the interests of farmers and consumers. In fact, it is thought that the current requirement to disclose potential harm incentivizes the best possible product for product users.

As you know, this issue will be taken up by the Supreme Court in *Monsanto v. Durnell* in the court's current session. We urge the committee to postpone action on HB 2476 pending Supreme Court action and more thorough review of the issues that are critical to the protection of those who use pesticide products.

The debate on HB 2476 is not about whether we like pesticides are not. It is about ensuring a basic level of protection for those who use them.

Thank you for your consideration of our comments.