

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2277

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2277
January 26, 2011
Job Number 13438

Conference Committee

Committee Clerk Signature	<i>Eva Lubelt</i>
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Explanation or reason for introduction of bill/resolution:

Relating to exceptions to Sunday closing

Minutes:

Attached Testimony

Chairman Klein: Opened the hearing on Senate Bill 2277.

Senator Holmberg: States that the bill has nothing to do with the sales of cars. Under the current law if you do not sell gas, you cannot be open until noon on Sunday. If you sell gas you can open up before noon on Sunday, feels this is unfair to dealerships that would like to be able to do car washes and oil changes. He hands out a copy of an article of the history of the blue laws and he discusses the article.

Brian Rydell, Owner and General Manager of the Rydell Auto Center in Grand Forks North Dakota: He needed clarity on being open on Sunday to service vehicles, he found out they can open up after twelve, not selling but performing services. The second thing they are looking for is to have an equal playing field with the other businesses that open up before noon. He continues to talk about why he thinks it is only fair and that they are being discriminated against because they don't sell gas, therefore cannot open up until noon. They don't want to go outside the law or be shady; they want to do it the right way.

Senator Nodland: Asked if they had a quick lube service and if they do perform services on Sunday after twelve now.

Brian: They currently do not and they are in the process of building a car wash and they thought it would be a good opportunity to open them up on Sunday because there is a demand.

Continued questions for Brian

Opposition

Matthew C. Larsgaard, MBA, Automobile Dealers Association of North Dakota: Testimony Attached (1). Handout from the Automobile Association of North Dakota with emails from dealerships in opposition in North Dakota.

Pam Kostelecky, Sax Motor Company: In opposition of the bill. She talks about the bill and what it will do to the current staff. Feels it is impossible to hire more staff, they are already competing with the energy sector to keep their present employees.

Senator Murphy: Commented that they do not have to open and what was the threat to them if someone else wants to.

Pam: Felt that there evidently would be an impact to them if places started opening up, their customers would drive elsewhere to get the services.

Jim Neumiller, Automotive Technician: In opposition of the bill. Stated that he already puts in long hours and that the industry is already very demanding on the technicians. He also felt that not having to work on Sundays is a positive aspect for North Dakota.

Comments and Questions

Lisa Heilman, Schwan GM Auto: In opposition to the bill. Said they are already opened long hours. She stated that because one dealer wants to be opened it will change it for all of them. Explains how hard it is now to find quality people to work.

Jesse Peterson, Eide Ford: In opposition to the bill. Said that as a business owner sometimes you have to look out for your employees. They have a competitive environment and they have a hard time recruiting and retaining employees. Opening on Sunday would make it harder for them. They are already recruiting from other states and they get them because of the promise of a good family life in North Dakota.

Doug VanderMeulen, Pastor of the Community Baptist Church in Fargo: Is in opposition of the bill. Talked about the need for rest on Sunday and that it is one of the last places people can go to learn about morals. He believes it is the Legislatures job to protect their ability to go to church.

Questions for Pastor Doug

Christopher T. Dodson, Executive Director of the North Dakota Catholic Conference: Testimony Attached (2). In opposition of the bill.

Chairman Klein: Closed the hearing.

Senator Andrist: Moves a do not pass.

Senator Nodland: Seconded the motion.

Roll Call Vote: Yes-4 No-3

Senator Nodland to carry the bill

Date: 1/26/2011
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2277

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Andrist Seconded By Senator Nodland

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider		✓
VC George L. Nodland	✓		Senator Philip Murphy		✓
Senator John Andrist	✓				
Senator Lonnie J. Laffen		✓			
Senator Oley Larsen	✓				

Total (Yes) 4 No 3

Absent 0

Floor Assignment Senator Nodland

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

REPORT OF STANDING COMMITTEE

SB 2277: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO NOT PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2277 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

SB 2277

The Forum

Published January 23 2011

Blue laws: North Dakota spent decades waging war over right to shop on Sunday

In January 1981, Chester Reiten, then a Minot state legislator, delivered a fiery speech on the Senate floor. He warned of rising greed, diminished worship, fractured families and "the final nail in the coffin" of rural North Dakota.

The target of his ire: a proposal to loosen the state's longstanding and near-blanket ban on Sunday shopping.

Reiten and his supporters carried the day, quashing the legislation in question by a laughable margin, preserving what Reiten called "one day of the week when people should relax."

But for North Dakotans on both sides of the issue, relaxing on Sundays was far easier than relaxing about Sundays.

By the time the nation's strictest retail restrictions were finally rolled back in 1991 – next month officially marks the 20th anniversary of repeal – supporters and opponents of North Dakota's "blue laws" had spent decades waging war over the right to shop seven days a week.

A century of closings

North Dakota's "blue laws" date back to the founding days of the state. The statute prohibited the sale of all but a few items on Sundays – drugs and medicines, ice cream, cigars and newspapers were among the exceptions (service businesses like restaurants and hotels were generally exempt).

For decades, they were codified under a section titled ominously as "Offenses Against Religion and Conscience." But the bark was worse than the bite: Enforcement was sparse and selective.

"Oh, that law?" one Jamestown grocer told The Forum in 1965. "I don't pay any attention to it."

From time to time, a zealous state's attorney would embark on a crackdown, arresting a handful of clerks and store owners here and there on charges of "Sabbath-breaking" or threatening to seize merchandise from offending shops. A spate of such crackdowns in the 1960s led to complaints that the law was vague and discriminatory. In 1967, the law was updated to allow owner-operated stores with three or fewer employees to open on Sundays.

"Sunday opening will happen," he said.

The push for repeal

In 1990, a group of businesses fed up with waiting for the Legislature sued to have the law overturned. The suit was headed by the Greater North Dakota Association (now known as the state's Chamber of Commerce). One small-town newspaper publisher, offended by the perceived encroachment on rural businesses, proposed a boycott of the GDNA in response.

The lawsuit failed, like others before it, but not without a strange twist in the final ruling: Stores could open on Sundays, the state Supreme Court said – they just couldn't sell any banned items. Most food was permitted; most dry goods weren't; confusion reigned.

Meanwhile, frustrated business started looking for loopholes. Even the city of Fargo spent a good deal of time exploring an exemption that might allow Sunday openings during festivals, going so far as to declare "festivals" for events like Canada's Dominion Day and the entire month of July before drawing a rebuke from state prosecutors.

By 1991, those efforts were moot: Spurred by public sentiment and media attention (The Forum published no fewer than 20 editorials on the subject in the 25 months that preceded repeal), the Legislature finally came around.

On Feb. 1, a bill to wipe out the Sunday closing laws and permit stores to open at noon – a compromise to satisfy churchgoers – stormed through the Senate 39-14. The following week, the House followed suit 72-33, and Gov. George Sinner signed the repeal into law.

The overwhelming support for the bill – critical because a two-thirds majority prevented opponents from suspending the law with a petition to refer it to voters – prompted Fargo Democrat John Schneider to channel his inner T.S. Eliot and muse: "Like all momentous things that the Legislature decides after decades of discussion, it does not pass with a bang but more with a whimper."

In a less poetic episode, Rick Berg (then a West Fargo legislator, now a Republican congressman), in his "enthusiasm to see the vote" on the bill, failed to record his vote for repeal, instead pressing the button that summoned a page.

Looking forward

West Acres chief executive Brad Schlossman remembers helping his father, William, make the case for repeal. He remembers emotions running high and the increasingly confounding judicial rulings – "You can buy all the food you want but you can't buy tinfoil," as he puts it.

Blue laws are state or local laws that prohibit commercial activity on Sundays. They date back to colonial times and originally were directed at activities regarded as moral offenses, such as gambling or the consumption of alcohol.

It was the 19th century when state and local governments passed laws that forbade businesses from operating on Sunday as well, according to West's Encyclopedia of American Law. And though these laws were based on Christian beliefs, the U.S. Supreme Court has ruled they do not violate the First Amendment's Establishment Clause.

Many blue laws have been repealed since the 1960s, but some laws that ban the sale of alcohol on Sunday remain. There are also some businesses that still chose to close on Sundays or limit hours.

What are name?

The origin of the term "blue laws" is up for debate. One theory holds that it came from the color of the garments of the working class, which the laws were designed in part to protect.

Other theories on the use of the word "blue" range from the blue skies, which people would enjoy if they spent the day relaxing, to the claim that the original blue law pamphlets were printed on blue paper. Blue paper would have been a luxury item in the 17th century.

Some even suggest that the term "blue" was used as an insult against extreme moralists and politicians, much like our present day description of snobbish people as bluebloods.

Senate Bill 2277
Testimony before Senate Industry, Business, and Labor Committee
Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota
10:15 a.m., January 26, 2011

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing in opposition to Senate Bill 2277 on behalf of the Automobile Dealers Association of North Dakota which consists of the franchised new car dealers in our state.

This legislation will create an exemption to the Sunday Closing Law for new car dealerships that sell oil and either provide daily repair services or sell motor vehicle products which are identified on lines 9-15 of the bill.

Section 12.1-30-03 was created in 1973; it fashioned an exemption to the Sunday Closing Law for those businesses that provide essential services or products such as prescription drugs, food, ambulance services, gasoline, emergency equipment, telephone services, etc.

In 1983 Section 12.1-30-03, Subsection 21 was amended in an effort to define "Automobile Service Stations." This was in response to an auto parts store that had been violating the Sunday Closing law. It was very clear in recorded testimony that a "Motor Vehicle Service Station" is one that sells both motor oil and gasoline; it was not intended to include motor vehicle dealerships.

We also have several questions about this legislation. Does it allow auto body shops, tire stores, auto parts stores, and other retail businesses to be open by simply putting a quart of oil on their shelf and offering it for sale? Does this bill create a "loop-hole" that would open up our Sunday Closing Law? I bring these questions to the committee in an effort to help identify any unintended consequences.

Mr. Chairman, I have received e-mails and calls from over 1/3 of our dealership owners and their employees; every contact, except one, was strongly opposed to this legislation. The last page of your handout identifies some of the e-mails I received from dealers throughout North Dakota.

There are several reasons why automobile dealers are negatively impacted by SB 2277:

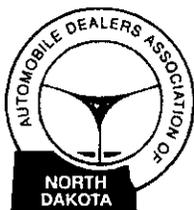
1. The auto business is demanding by its nature, and **dealership employees already work long hours**. This bill may force dealer owners to further infringe upon employee family and personal time in order to stay competitive, reducing employee morale and making it more difficult to attract new employees.
2. **This bill will hit rural automobile dealerships hard**. Small town dealers often do not have enough employees to schedule shifts of workers to cover Sundays. They will be forced into an unfair, competitive disadvantage that compels service and repair customers to be drawn into the larger cities.
3. Our association has heard from only ONE dealer that wants their shop open on Sunday morning vs. many dealers of all sizes and in all parts of the state that are adamantly opposed to this concept. **This bill negatively impacts the vast majority of new car dealerships and should NOT be passed.**
4. The majority of North Dakota automobile **dealers want to give their employees the opportunity to worship on Sunday mornings and spend time with their families**. These are deeply-held quality of life issues that are important to North Dakotans. Senate Bill 2277 creates an unwelcome and unnecessary challenge to these values.
5. **There is not a public outcry for dealerships to be open on Sunday;** however, there is an outcry from dealers to remain closed.

Mr. Chairman, this concludes my testimony. I would be happy to answer any technical questions regarding the bill. Otherwise, there are several dealers and employees here to explain the real life side of this bill and how it affects them, in the dealership.

Matthew C. Larsgaard, MBA

President/CEO

Automobile Dealers Association of North Dakota



Automobile Dealers Association of North Dakota

OPPOSE Senate Bill 2277

Opens Sunday Closing Law

This legislation will create an exemption to the Sunday Closing Law for new car dealerships that sell oil and provide repair services or products. **Dealerships would be compelled to be open.**

The auto business is demanding by its nature, and **dealership employees already work long hours**. This bill may force dealer owners to further infringe upon employee family and personal time in order to stay competitive, reducing employee morale and making it more difficult to attract new employees.

This bill will hit rural automobile dealerships hard. Small town dealers often do not have enough employees to schedule shifts of workers to cover Sundays. They will be forced into an unfair, competitive disadvantage that compels service and repair customers to be drawn into the larger cities.

Our association has heard from only ONE dealer that wants their shop open on Sunday morning vs. many dealers of all sizes and in all parts of the state that are adamantly opposed to this concept. **This bill negatively impacts the vast majority of new car dealerships and should NOT be passed.**

The majority of North Dakota automobile **dealers want to give their employees the opportunity to worship on Sunday mornings and spend time with their families.** These are deeply-held quality of life issues that are important to North Dakotans, and Senate Bill 2277 creates an unwelcome and unnecessary challenge to these values.

Many dealerships are already open very late hours six days per week.

There is not a public outcry for dealerships to be open on Sunday; however, there is an outcry from dealers to remain closed.

Matthew C. Larsgaard, MBA
President/CEO

Automobile Dealers Association of North Dakota
Cell: 701-388-7062 matthew@adand.com

North Dakota Franchise New Car Dealer E-mails Regarding SB 2277

"I own 5 auto dealerships in the state of North Dakota. Please note that all 5 of our dealerships are strongly **opposed** to the Sunday opening bill."

"We work enough hours and **do not want to be open** on Sundays."

"We strongly **oppose** the change in the Sunday opening law. **All of our employees work many hours the way it is. They need to have time with their families.** The auto business is demanding enough the way it is without having to work Sundays also. Thanks for the opportunity to voice our opinion."

"I am a dealer from a small town and am very much **opposed to Sunday** morning opening. I am also opposed to opening at all on Sunday. As a small town dealer, opening up Sunday morning will allow larger shops in big cities to attract customers from our small towns. **This is a disadvantage to smaller town dealers and small shop operators in larger towns that do not have the ability to have shifts of workers.**"

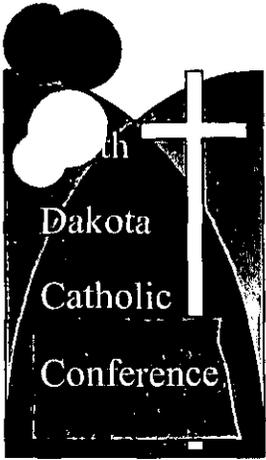
"**My employees and I are all opposed** to the proposal to allow our dealerships to open the service department on Sunday mornings. **We are already open 67 + hours a week.** Employees need time off to be with their families and to attend to their own business. **We currently are not open at all on Sundays and want to stay that way, but if this bill passes and our competitors start opening Sunday am and are open for a "full" day we might be forced to open our business to stay competitive.**"

"I agree with ADAND; in **opposition to this bill.** There is NO purpose to adding another 3-4 hours to an already 70 hour work week. Currently, Saturdays are the slowest service/parts sales days at our dealership. We only stay open as a service to our customers. We as service providers are already extremely accommodating to the publics' needs pertaining to our hours of operation. Most dealerships open well before people go to work and stay open long after most people are off from work. We also have "drop boxes" and allow customers to drop off their vehicles at any time. I believe most convenience/gas stores sell basic needs for cars (oil, filters, bulbs, wiper blades). Sunday mornings are for FAMILY and that's one of the values North Dakotans hold close to their hearts. It needs to remain a family time."

"I do not agree with the bill to allow service departments and sellers of motor oil to be open on Sunday mornings. **We need to keep Sunday morning as a day of worship. This is in part of what keeps North Dakota special in respect to our family values.**"

"I am **opposed to this bill** and here are my areas of concern:

1. Employee's opportunity to worship of their choice without the conflict of work entering into their choice. Definite infringement on family life.
2. We are struggling to find employees, this would make it even harder knowing that when hired they would be required to work some Sundays.
3. If this bill is allowed to pass – the next step would be the opening of auto sales on Sundays.
4. **This is one dealership wanting the change and definitely not the majority. Do we create bills for every single issue wanted?**
5. The forcing of dealerships to open to remain competitive. Rural areas would be hard hit to remain competitive."



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

Christopher T. Dodson
Executive Director and
General Counsel

To: Senate Industry, Business and Labor Committee
From: Christopher T. Dodson, Executive Director
Subject: Senate Bill 2277 - Exemption to Sunday Closing Law
Date: January 26, 2011

The North Dakota Catholic Conference opposes Senate Bill 2277.

Senate Bill 2277 has the potential to significantly weaken current state law concerning commercial activity on Sunday mornings and, as such, erodes the common good.

The purpose of North Dakota's Sunday closing law is not to impose times of worship. Nor is it to demand adherence to religious doctrine. The purpose of the law is to preserve the common good by ensuring that society is not overtaken by work and profit.

Humans and communities need periods of rest and free time that allow them to tend to family, cultural, social, and religious life. Only when communities set aside time devoted to these functions can human persons prosper and develop.

Rather than restricting individual freedom, closing laws liberate and free people from the antisocial degeneration of human work. Indeed, the need for closing laws is even greater in societies like ours that place a high value on economic liberty. Economic liberty can only thrive in healthy communities and a community that races to the bottom in its demands on workers, especially those of less means, is not a healthy community.

Senate Bill 2277 appears to allow the Sunday morning opening of numerous types of businesses in addition to new automobile dealerships. Accordingly, it poses a threat to communities and the common good.

We respectfully request a **Do Not Pass** recommendation.