

2015 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2208

2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2208
1/19/2015
Job Number 22093

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to retail business leases and agreements and state holidays

Minutes:

Attachment

Chairman Klein: Called the committee back to order.

Senator Oehlke: Introduced the bill. Current century code makes it a misdemeanor if a franchise forces their franchisees to be open on a Sunday. That doesn't affect Thanksgiving Day or Christmas. He was contacted by a franchise owner who would like to see these days included in the law. Written testimony of **Matthew C. Larsgaard, MBA, Automobile Dealers Association of North Dakota, North Dakota Implement Dealers Association** was given to Senator Oehlke to hand out, Attached (1). (:12-3:00)

Senator Murphy: Asked if this would still allow a business to open if it wishes.

Senator Oehlke: That's accurate and that's a good point because it isn't that you have to or that you don't have that option. I think that's what the Franchisees would like to have, that option.

Jon Godfread, Vice President of Government Affairs, Greater North Dakota Chamber of Commerce: In opposition of the bill, Written Testimony Attached (2). (4:20-5:19)

Chairman Klein: With the current law we already provided for Sundays, we are adding a couple of days.

Jon Godfread: We opposed the Blue Laws from the beginning and this is expanding on that. We don't feel the State should be in the position of making that decision for the consumers or mall owners or franchisors.

Mike Rudd, North Dakota Retail Association: In opposition of the bill.

Chairman Klein: This is currently part of the lease agreement for Sundays and all we are doing is including Thanksgiving and Christmas. We aren't changing anything in the lease agreement. This would be prospective, I would assume.

Mike Rudd: Said that he thinks this could be worked out and resolved within the confines of both the mall owner and the shop operator. It doesn't have to be an issue where the government gets involved.

Chairman Klein: Closed the hearing and the committee further discussed the issue.

Senator Miller: Moved a do not pass for discussion purposes.

Senator Murphy: Seconded the motion.

Senator Miller: Said he often struggles with the Blue Laws. He thinks it is an important rule for government to set a certain sort of moral standards. He also sees the government eroding moral standards so he thinks it is a better policy to take the position less involved as a better policy.

Senator Poolman: Said that it is already on the books as part of Sunday and it is not prohibiting these businesses from being open if they wish.

Chairman Klein: Said they have Sunday in the agreement already and he is not supporting the do not pass.

Senator Sinner: I tend to agree that if someone doesn't want to force their employee to work on Christmas Day that should be that person's right under our laws. I am not going to support the do not pass. Those owners should have the right on those particular two days to allow their employees to spend with their families.

Senator Murphy: Doesn't that beg the argument though because it is negotiated that we don't need this.

Chairman Klein: We could argue then that we didn't need to put Sunday in the law but it's something we negotiate as we work our contractual agreements with the ones who carry the lease.

Senator Sinner: Many times the lease holder, the owner of the franchise, has a hammer over you by sending these things out.

Senator Poolman: They can tell you down to the color of the chairs that you have to have in your building. The idea that this is somehow an even negotiating turf, I think is not particularly realistic.

Senator Campbell: I am a pro supporter of less regulation and I will support the do not pass because these franchises, before the employee starts working for that franchisee and before that owner took on that franchise, they knew the laws. I don't think the government should be regulating this, where do we stop.

Chairman Klein: The clerk will call the roll for a do not pass.

Roll Call Vote: Yes-3 No-4 Absent-0

That fails.

Senator Poolman moved a do pass on SB 2208.

Senator Burckhard seconded the motion.

Roll Call Vote: Yes-4 No-3 Absent-0

Senator Poolman will carry the bill.

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2208**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Miller Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Klein		x	Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner		x
Senator Burckhard		x			
Senator Miller	x				
Senator Poolman		x			

Total (Yes) 3 No 4

Absent 0

Floor Assignment _____

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

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2208**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Poolman Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy		x
Vice Chairman Campbell		x	Senator Sinner	x	
Senator Burckhard	x				
Senator Miller		x			
Senator Poolman	x				

Total (Yes) 4 No 3

Absent 0

Floor Assignment Senator Poolman

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

REPORT OF STANDING COMMITTEE

SB 2208: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2208 was placed on the Eleventh order on the calendar.

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2208

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2208
3/16/2015
24854

- Subcommittee
 Conference Committee

Ellen Litang

Explanation or reason for introduction of bill/resolution:

Retail Business leases & agreements and state holidays and to provide a penalty

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing on SB 2208. This is a short bill and we do have in law that a retail business may not be required to be open on Sunday as part of their lease agreement. We are adding to that, Thanksgiving & Christmas Day.

Representative Becker: I'm opposed to this bill because of the aspect of Sunday. I think it gets into contract arrangements and it's their choice to enter into the contract arrangement.

Senator Dave Oehlke~District 17: Introduces the bill, the senate did talk about the contract issue. The franchise owner cannot force the franchisee to be open on either of those two days. They can be open if they wish but it would be at their option.

Representative Ruby: Would this apply to a mall which is not a franchise agreement?

Senator Oehlke: The mall is not a franchise, the only conflict I can see is a different contract for the owner of the particular retail,.

Representative Ruby: In existing language, says lease agreement, did you have any discussion?

Senator Oehlke: I suppose it's part of century code, I guess it could possibly be an interest there.

Representative Ruby: With a mall open, they would expect all the stores to be open. There would be certain ones that would closed during those times if this goes through.

Senator Oehlke: Could be.

Chairman Keiser: Anyone else here to testify in support of SB 2208, opposition?

Laney Heruff~Government & Regulatory Affairs Specialist with the Greater North Dakota Chamber: (Attachment 1).

Representative M Nelson: Would the chamber also oppose to not have Sunday?

Herauf: The market should dictate that.

Representative Amerman: What if the retail business has to be open even if it's not profitable that day.

Herauf: They signed a contract knowing that it may or may not be profitable.

Chairman Keiser: If you are a national chain, I sign it; can state law preclude that contract?

Herauf: I would have to do more research on that.

Representative Kasper: The last two lines of paragraph two, right now they don't have that choice if they have entered into a contract that says they must be open, your testimony contradicts itself.

Herauf: I apologize for that contradiction.

Chairman Keiser: Closes the hearing on SB 2208, what are the wishes of the committee?

Representative Becker: Moves a Do Not Pass.

Representative Ruby: Seconded.

Representative Hanson: I would think that a contract signed in North Dakota, I would have to obey North Dakota law.

Representative Kasper: I'm going to vote against the motion and it's the conflict between the big business and small business. I think it's wrong. There is already a precedent that says they do not have to be open on Sunday, so this is not changing precedent, it's just expanding.

Representative Ruby: The profitability, you signed the contract for a franchise, very seldom will they have you open if it's not profitable. I can't see where they are forcing you to operate on a day that's not profitable; I don't see that as a problem. When they made an agreement, you have the choice to go to the mall or a strip mall. If you are going to sign an agreement you have to abide by the contract. I'm going to support the motion.

Representative Becker: I will echo Representative Ruby's comments. This is about government interfering in contracts. I agree this is an expansion that is already there.

Representative Kasper: We already interfered in contracts; we make rules and regulations as a state. We would have no law and it's an open society if government didn't interfere. In many cases, I agree, government has no business interfering, but it does. There is a difference between a franchise and a mall. In North Dakota we don't have a multiple places where business owners can chose to be. You try to get to the prime spots because you want to maximize a profit. I look upon this as a small and big business and I'm going to side with small business.

Representative Beadle: In the lease sign, the tenant has the vast majority of the power. I will uphold the Do Not Pass.

Vice Chairman Sukut: I've been involved on both sides of the issues. I going to support the motion.

Representative M Nelson: I'm going to resist the motion; I don't think anyone anticipated what is happening with Black Friday. I opposed to that because of the evolution of business.

Roll call was taken on SB 2208, for a Do Not Pass with 10 yes, 4 no, 1 absent and Representative Amerman will carry the bill.

Date: Mar 16, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2208

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Rick Becker Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Representative Amerman	X	
Representative Devlin	X		Representative Boschee		X
Representative Frantsvog	AD		Representative Hanson	X	
Representative Kasper		X	Representative M Nelson		X
Representative Laning		X			

Total (Yes) 10 No 4

Absent 1

Floor Assignment Rep Amerman

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

REPORT OF STANDING COMMITTEE

SB 2208: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING).
SB 2208 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2208

Senate Bill 2208
Testimony before Senate Industry, Business, and Labor Committee
Matthew C. Larsgaard, MBA
Automobile Dealers Association of North Dakota
North Dakota Implement Dealers Association

10:15 a.m., January 19, 2015

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing in Support of Senate Bill 2208 on behalf of the Automobile Dealers Association of North Dakota and the North Dakota Implement Dealers Association.

These two organizations represent approximately 225 of our state's franchised new car and farm equipment dealerships. Collectively, these organizations employ more than 7,000 employees. Farm machinery, automobiles, and repair parts alone account for more than \$10 billion of sales in our state.

The retail automobile and farm equipment business is demanding by nature; dealership employees work long hours. This bill provides North Dakota business owners with a small amount of empowerment to help ensure that their workplace is both employee friendly and competitive in the labor market.

The majority of North Dakota's dealerships want to give their 7,000+ employees the opportunity to spend time with their families during the holidays. These are deeply-held quality of life issues that are important to the majority of our employees.

This bill creates a welcome support to those business owners who desire to uphold North Dakota's traditional family values.....if they so choose. It is important to understand that this bill does not require businesses to close on Christmas or Thanksgiving. However, it does provide business owners with more power to negotiate the terms of franchise or lease agreements to the benefit of their employees.

Mr. Chairman, this concludes my testimony.

Matthew C. Larsgaard, MBA
President/CEO
Automobile Dealers Association of North Dakota
North Dakota Implement Dealers Association



Testimony of Jon Godfread
Greater North Dakota Chamber of Commerce
SB 2208
January 19, 2015

Mr. Chairman and members of the committee, my name is Jon Godfread. I am the Vice President of Government Affairs at the Greater North Dakota Chamber, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we oppose SB2208.

We simply feel this isn't an area where the state should be a regulator. Consumers speak with their feet, and the market is designed to let them do so. This is a slippery slope to head down, similar to blue laws. The GNDC has always believed that decisions like hours and days of operation are best left to the market place, not the legislature. Our customers will tell us if they will support hours of operation. If it is not profitable to be open on a certain day, businesses won't do it. They will respond to customer demand.

SB 2208 seeks to inject the state into an agreement between two willing business parties, which is not where the state belongs. These agreements are entered into are often mutually beneficial, be it a franchise agreement, you get to use the franchise name, or in a mall setting, you get to benefit from the extra traffic that is brought to the mall. Putting limitations on what can be asked for in return sets a dangerous precedent. Operation hours and days are best left to be negotiated between the franchisee or and the franchisor, or the mall owner and store owner. In our opinion this would be unnecessary over regulation and sets a dangerous precedent for the state to micro manage within our business community.

Thank you for allowing me to testify, we would support a DO NOT PASS recommendation on SB 2208. I would now be happy to attempt to answer any questions.

Champions  Business

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www.ndchamber.com

Testimony of Laney Herauf
Greater North Dakota Chamber of Commerce
SB 2208
March 16, 2015

Mr. Chairman and members of the committee, my name is Laney Herauf. I am the Government and Regulatory Affairs Specialist with the Greater North Dakota Chamber, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we oppose SB2208.

We simply feel this isn't an area where the state should be a regulator. Consumers speak with their feet, and the market is designed to let them do so. This is a slippery slope to head down, similar to blue laws. The GNDC has always believed that decisions like hours and days of operation are best left to the market place, not the legislature. Our customers will tell us if they will support hours of operation. If it is not profitable to be open on a certain day, businesses won't do it. They will respond to customer demand.

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