

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1293

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1293
1/22/2019
31233

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Retail business leases or agreements and discriminatory practices, one day of rest & provide a contingent effective date.

Minutes:

Attachment 1, 2, 3, 4, 5, 6, 7, 8

Chairman Keiser: Opens the hearing on HB 1293.

Rep K Koppleman~District 13, West Fargo: Introduces HB 1293. Attachment 1. In section 4 at the end of the bill is about the blue laws. The religious freedom of the people who didn't want to work on Sunday. It makes sense to make an exception for truck driving. This bill tightens it up & make it more affective. This is not an anti-business bill, instead we have to balance & guarantees religious freedom. Goes over the amendment.

6:40

Rep Laning: For a schedule of 7 days on, 7 days off, on page 1, you can have someone that works 7 days, then another crew come in. How do you accommodate that?

Rep K Koppelman: You are quoting current law. You could amend that.

Chairman Keiser: Why did we strike "retail". This is for all?

Rep K Koppelman: Yes, good catch.

Rep D Ruby: Section 3, you relate to the retail businesses again. What this is still doing is not keeping the employees from working, just keep the businesses opening.

Rep K Koppelman: The rest of the bill deals with the employees working. The section that you are talking about is intended for, is that there are some retail leases intent that all our stores are going to be open on Sunday. A landlord should not force them to violate that if they want to rent space there.

Rep D Ruby: The trouble with the blue law is all the exceptions. Then your amendment is another exception, then there is another law.

Rep K Koppelman: Point of the bill is to say that the exception that is in current law, essentially renders the whole section inoperative. May as well just repeal that section. This is to say that we need to tighten it.

Rep Kasper: The seven days on & off, doesn't current law already provide that on page 1, line 12-17 that Rep Laning expresses concern about?

Rep K Koppelman: I think you are right.

Carel Two-Eagle~Citizen: Attachment 2.

Douglas VanderMeulen~Teaching Pastor of Community Baptist Church in Fargo: Attachment 2.

26:40

Rep M Nelson: Section 3, you would be in favor of businesses to be closed one day of the week regardless of the day?

Douglas VanderMeulen: I don't have any problem with a business on what day they want to be open or closed. I'm concerned with the employees, the owner must accommodate their weekly time worship, that's the code. It's the right of employee on a weekly basis.

Christopher Dodson~ND Catholic Conference: Attachment 3. Much has already been said. We have a need to protect the public school religious students. There is no law in the code, federal or state, that protects them from being penalized for missing an event.

Chairman Keiser: Is there any incidents that you know of that this is happened?

Christopher Dodson: You would be surprised at the numerous times. They don't have to attend but they pay a penalty.

Rep D Ruby: How broad is the intent of the amendment for the activities?

Christopher Dodson: I tried to write this narrowly. I tried to make it an event, like missing an event because of religious observance.

Rep Richter: If they miss a rehearsal, they can't be in a play?

Christopher Dodson: I interpret as a penalty. What I'm trying to address is when you miss a rehearsal on Wednesday, they can't play in the game on Friday. To solely exclude them, this needs to be addressed.

Dave Motta~Calvary United Methodist: I'm for HB 1293 it will guarantee for North Dakotans the right to practice religion already promised by the US Constitution & our century code in ND. The 10 Commandment, remember to keep the Sabbath Day & keep it holy.

This would guarantee all people a day to worship. My people can't do that because they have to work.

Chairman Keiser: We have the new language in the bill but lines 9-17, really contradicts what you want. The 1st part starts good, but the rest is contradictory.

Dave Motta: I feel the rights of worship supersedes the rights of the employer.

Rep D Ruby: There is contradictory with section 2 & 3, which is inconsistent.

41:25

Chairman Keiser: Anyone else here to testify in support, opposition on HB 1293?

Matt Gardner ~ Representing the Greater North Dakota Chamber (GNDC): Attachment 4.

43:45

Rep Schauer: Isn't it the goal for the employers to take care of their employees?

Matt Gardner: Yes, but especially with the lack of workers & they are accommodating.

Rep Schauer: Can you give an example of undue hardship?

Matt Gardner: Agriculture is an example, where they need to get the work done. Hardship, yes, they need to get their crops done.

Rep Schauer: Do you believe there is a high number of employers where they say that you have to work seven days a week or you will lose your job?

Matt Gardner: I would say no.

Rep Richter: When you say no, you are referring to retail, not the oil field?

Matt Gardner: That would be my belief.

Mike Rudd~Representing the ND Retail Association & ND Petroleum Marketers: I agree with you that lines 9-17, paints a clear picture already. It appears to me that all you would have to do is file a discrimination with the labor commissioner. I don't know if you need the language, it's already here. So, the language is here, it's a matter of enforcement. I would oppose this.

Chairman Keiser: Explains a 14-day work business model that is in the oil patch. That would present a problem.

Mike Rudd: A lot of the oil patch, they have an expectation that they would have to come in.

Rep O'Brien: Do you know how many retail that are required to be open on Sundays according to their agreement?

Mike Rudd: I'm not sure about that, but it's a lease agreement. It varies depending on the mall owner.

Travis Engelhardt~Director of Human Resources for the Department of Corrections & Rehabilitation (DOCR): Attachment 5.

53:50

Chairman Keiser: Would the amendment proposed bring you under the umbrella, potentially?

Travis Engelhardt: Sounds like it certainly could.

Mike Gerhart~Executive Vice President of North Dakota Motor Carriers Association: Attachment 6.

Brady Pelton~North Dakota Petroleum Council: Attachment 7.

58:10

Rep Kasper: Your industry is ok with the current law, is that correct?

Brady Pelton: Yes, that's correct.

Chairman Keiser: Anyone else here to testify in opposition, neutral position? Closes the hearing on HB 1293.

Testimony submitted but didn't testify.

Cheryl Riley~President of ATT&T Northern Plains: Attachment 8.

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1293
1/23/2019
31330

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Retail business leases or agreements and discriminatory practices, one day of rest & provide a contingent effective date.

Minutes:

Attachment 1

Chairman Keiser: Reopens the hearing on HB 1293. We heard this bill yesterday. There were two sets of amendments offered with additional amendments.

Rep P Anderson: We started this bill because of Sunday opening. The original bill was retail & now we have an amendment for ND high school activities. I think the unintended would be horrendous.

Chairman Keiser: We need a motion.

Rep Kasper: Moves the amendment for ND high school activities to be added to the bill.

Rep P Anderson: Second.

Roll call was made on the amendment with 2 yes, 10 no, 2 absent, motion failed.

Rep Kasper: Moves for a Do Not Pass.

Rep D Ruby: Second.

Chairman Keiser: Further discussion?

Rep D Ruby: I was thinking of putting Rep Koppleman's amendment on but there were too many exclusions. I'm going to accept the motion.

Rep Kasper: I don't think this accomplishes what he wanted. It's a good move to kill the bill.

Rep Richter: Ditto what Rep Kasper said.

House Industry, Business and Labor Committee
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Page 2

Chairman Keiser: Further discussion?

Roll call was taken on HB 1293 for a Do Not Pass with 11 yes, 1 no, 2 absent & Rep Bosch is the carrier.

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1293
2/6/2019
32320

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang by Kathleen Davis

Explanation or reason for introduction of bill/resolution:

Retail business leases or agreements and discriminatory practices, one day of rest & provide a contingent effective date.

Minutes:

Attachment 1

Chairman Keiser: Reopens the hearing on HB 1293.

Rep. Schauer: move to reconsider HB 1293.

Rep. Ruby: second.

Chairman Keiser: we have a motion to reconsider HB 1293 and a second. Discussion? Voice vote. All in favor aye? Opposed nay? Motion carried.

Rep K Koppelman: presented Attachment 1 (Amendment 19.0703.03003). Reason for the bill was to protect religious freedom.

Rep. Ruby: How do you define severe financial hardship?

Rep. K Koppelman: I agree it's somewhat open to conjecture or discussion. I would trust businesses to determine that. I don't think businesses are going to abuse this.

Rep. Ruby: Substantial economic burden is somewhat subjective but when you're saying severe financial hardship almost requires an opening of books.

Rep. K Koppelman: I see your point but an economic burden could as well. We debated that with LC how to come up with a term that makes sense. These are subjective terms in current law and in the amendments.

Rep. Richter: Page 1 Line 22 did you consider just removing the overstrike?

Rep. K Koppelman: The intent was to say religious liberty should be guaranteed not for just people employed in retail but for everybody. Current blue law specifically deals with retail

employees. The intent was to broaden it because all people in ND should be protected, not just a specific class.

Rep. Richter: I see it as expanding from one sector to all. Doesn't that place a burden on all those businesses that have been doing business a particular way for a century?

Rep. K Koppelman: The 1st Amendment has been around for more than two centuries. That guarantees religious freedom. If an employee of any business in ND felt their religious liberty is being infringed upon, I think they can challenge that. The idea is not to infringe on businesses. The intent is to make it reasonable.

Rep. Schauer: Section 2, Line 12. Who faces the class B misdemeanor?

Rep. K Koppelman: I think it would fall to the business owner if these are policies established within the business. I suppose there are scenarios where maybe a manager unbeknownst to the owner and the manager could be held responsible.

Rep. Nelson: Section 3 where it says a retail business may not be required to be open on Sunday. Is that a religious exemption?

Rep. K Koppelman: Yes, this is also in the bill that passed the house to repeal the blue laws.

Rep. Nelson: With the working, one day out of seven could be any day, but with the business you're saying Sunday.

Rep. K Koppelman: I had not even noticed that and I think LC just put that in there. What I said was the exclusion should mirror the bill. The intent was to clearly respect religious beliefs of any faith. I see what you're saying and have no objection to the committee amending that to mirror the rest of the bill.

Rep. Ruby: What happens if someone has worked for the business for 10 years, there's no signature at hiring?

Rep. K Koppelman: I hadn't thought about that. When laws go into effect they're not retroactive. If there's something the committee wishes to add I wouldn't have an objection.

Rep. Adams: Section 3, who is declaring the emergency? It doesn't say how the emergency is going to affect the employee or employer.

Rep. K Koppelman: I think the intent is the commonly understood emergency and I need all hands on deck to help deal with it.

Rep. Anderson: Has this been a problem other than in retail?

Rep. K Koppelman: I've heard the concern expressed even before the blue law changed which we're all anticipating. People come to me and say if we're going to repeal the blue laws, we have a responsibility to insure we're protecting religious liberty of the people of ND and enact legislation to ensure that.

Rep. Anderson: I want to know what you've heard from all other industries outside of retail.

Rep. K Koppelman: not all people contacted me were retail.

Rep. Ruby: I'd like to take off "at hiring" Page 2 Line 11 of the amendment. Why would people who have worked for a company for quite a while make an agreement? This would even allow an agreement to be made with someone that's been working for years.

Rep. Bosch: Can we make a motion to not accept the amendment?

Chairman Keiser: you can

Rep. Kasper: I'd like to make a motion to accept the amendment.

Rep. Johnson: second.

Chairman Keiser: we have a motion and a second to adopt the amendment. Discussion? All those in favor of adopting the amendment say aye, opposed say nay. The amendment is on the bill.

I kind of like it to be "at hiring". I would like it to be "at term of employment" but amend it the other way or for those current employees, that they could reach a written agreement.

Rep. Kasper: I wonder if either "at hiring" or "sometime after hiring" would accommodate.

Rep. Ruby: I don't know if you need to if you just take it off.

Chairman Keiser: I would like it on there. "at the term of employment". We have a proposed amendment, we'll work out exact wording with LC, at hiring or at a date after being hired.

Rep. Ruby: move to further amend

Rep. Kasper: second

Chairman Keiser: we have a motion and second to further amend. Voice vote, aye? Nay? Motion carried. We now have HB 1293 as amended.

Rep. Laning: I'd move a do not pass as amended.

Rep. Adams: second.

Chairman Keiser: I applaud Rep. Koppelman trying to address this issue. I think this amendment has so many undefined, vague terms, I'm not sure that helps.

Rep. Richter: I see this bill telling businesses they must follow the religious practice of a certain religion. They have to agree our religion says on the 7th day there's rest. So we're forcing them. It's in the religious freedom of people but it's also forcing a particular religious' belief on other people who may not have that belief.

Chairman Keiser: further discussion? We have a motion and a second for a Do Not Pass as Amended on HB 1293.

13 yes 1 no 0 absent Motion carried. Rep. Bosch is carrier.

Rep. Kasper: asked for a point of personal privilege.

Chairman Keiser: yes

Rep. Kasper: I see a few in the audience this might impact. I was told by someone that during my introduction of HB 1485, when I talked about visiting Microsoft that I stated, about a week or a week and half ago when I visited them. That was not my intent if I said that. I spoke with them last week Saturday at 10:30 am, my first conversation with Microsoft. If I misspoke, I apologize, and I want the record to show the date and time I spoke with them because it's caused some consternation and I don't want that to happen.

Chairman Keiser: We will be taking that up on Tuesday.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1293

- Page 1, line 21, overstrike "An" and insert immediately thereafter "Except in cases of emergency, an"
- Page 2, line 3, remove the overstrike over "~~unless the employer can demonstrate that to do so~~"
- Page 2, line 4, remove the overstrike over "~~would constitute~~"
- Page 2, line 4, after "undue" insert "a severe financial"
- Page 2, line 4, remove the overstrike over "~~hardship on~~"
- Page 2, line 4, remove the overstrike over "~~the employer's business.~~"
- Page 2, line 5, after the underscored period insert "Even in cases of severe financial hardship, the lack of accommodation may not be a regular practice."
- Page 2, line 6, remove the overstrike over "unless"
- Page 2, line 11, after "request" insert "the employer and employee have agreed in writing, at hiring, to waive this requirement"
- Page 2, line 11, remove the overstrike over the overstruck period
- Page 2, line 14, after "day" insert ", either under special circumstances or as a regular practice."
- Page 2, line 14, after "stating" insert "; or that honoring the employee's request would cause the employer substantial economic burdens"
- Page 2, line 17, remove the overstrike over "3:"
- Page 2, line 17, after the overstruck period insert: "As used in this section, an "emergency" is a situation that:
- a. Poses an immediate risk to health, life, property, or environment;
 - b. Has caused loss of life, health detriments, property damage, or environmental damage;
 - c. Has a high probability of escalating to cause immediate danger to life, health, property, or environment; or
 - d. Impedes or inhibits an essential function necessary for the operation of a business."

Renumber accordingly

February 6, 2019

DP 2/6/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1293

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Renumber accordingly

Date: Jan 23, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1293

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: NO HS activities be added to the bill

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 Rep Kasper Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep O'Brien		X
Vice Chairman Lefor		X	Rep Richter		X
Rep Bosch		X	Rep D Ruby		X
Rep C Johnson		X	Rep Schauer	X	
Rep Kasper		X	Rep Adams		X
Rep Laning	X		Rep P Anderson		X
Rep Louser	Ab		Rep M Nelson	Ab	

Total (Yes) 2 No 10

Absent 2

Floor Assignment Rep Bosch

motion failed

Date: Jan 23, 2019

Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1293

House _____ 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 Rep Kasper Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Schauer		X
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	Ab		Rep M Nelson	Ab	

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep Bosch

Date: 2-6-19

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1293

House _____ 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 action _____

Motion Made by Rep Schauer Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) _____ No _____

Absent _____

Floor Assignment voice vote - motion carried

Date: Feb 6, 2019

Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1293

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: 19.0703.03003 Koppelman's Amendment

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 Rep Kasper Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) _____ No _____

Absent _____

Floor Assignment voice vote - motion carried

Date: 2-6-19

Roll Call Vote #: 3

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1293

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description:

page 2, line 11 add "at or after"

Recommendation

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

Other Actions

- Reconsider further amend

Motion Made by Rep Ruby Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep O'Brien		
Vice Chairman Lefor			Rep Richter		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Schauer		
Rep Kasper			Rep Adams		
Rep Laning			Rep P Anderson		
Rep Louser			Rep M Nelson		

Total (Yes) _____ No _____

Absent _____

Floor
Assignment

voice vote - motion carried

Date: 2-6-19

Roll Call Vote #: 4

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1293

House _____ 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 Rep Laning Seconded By Rep Adams

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	X	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Schauer		X
Rep Kasper	X		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	X		Rep M Nelson	X	

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep Bosch

REPORT OF STANDING COMMITTEE

HB 1293: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1293 was placed on the Sixth order on the calendar.

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Renumber accordingly

2019 TESTIMONY

HB 1293

HB 1293

My name is Douglas VanderMeulen, one of the teaching pastors at Community Baptist Church in Fargo, North Dakota.

I am here today to speak on behalf of HB 1293 and am asking you to pass HB1293 unanimously. HB 1293 will close the loopholes in the Century Code that prevent section 34-06-05.1, the title "One day of rest in seven" from being consistently enforced in violation of the law's guarantee to employees a day of rest and religious observances.

The Century Code 34-06-05.1. Page No. 1 19.0703.03000 states that in part,

An employer may not require an employee to work seven consecutive days or deny an employee at least one period of twenty-four consecutive hours of time off for rest or worship in each seven-day period. The time off must be in addition to the regular periods of rest allowed during each day worked. An employer shall accommodate the religious beliefs and practices of an employee. If an employee requests time off to attend one regular worship service a week, an employer may not require the employee to work during that period.

Freedom of Religion

It is the intention of the HB 1293 to guarantee to all North Dakotans the rights and privilege to practice the free exercise of religion already promised in the US Constitution and our Century Code.

By passing HB 1293, the rights and privileges to freely practice religion will be finally extended to all North Dakotans regardless of race or creed. It will close the loopholes that permit businesses owners and to require their employees to work on Sunday, or any other day of their choosing - against their will. Additionally, the intent of HB 1293 is to close the loopholes that allow businesses owners to not hire a qualified individual because of their weekly religious practice.

The Century Code labels the failure to accommodate weekly religious practices "a discriminatory practice" and makes it a class B misdemeanor. The violation of this law already occurs more frequently in North Dakota than we might think. Passing of HB 1097 without HB 1293 will only serve to increase the occurrences of this discrimination.

My daughter is an example of the discrimination against weekly religious worship that is already in North Dakota. Megan played with the MSUM Rugby team when they won the national championship in 2015. She is also an excellent snowboarder and loves to hunt. She has also been on the academic honor roll every semester but one in her four years in college. She applied for work at a large Fargo retail store and was offered a job until she informed them she could not be available work on Sundays for religious reasons. Megan's job application was then declined. This retail store called Megan at least two more times offering her the job. When she reminded them that she was not available for work on Sunday, the job offer was again rescinded.

The basis for refusing work to my daughter is that this retail company requires all their employees to work every other Sunday. I met directly with the head of this particular retail store in his office as part of my preparation for coming to speak with you about the Blue Laws. He made it quite clear that the store's policy is that employees work every other Sunday. He also made it clear he has no intention of changing the policy of requiring every employee to work every other Sunday.

HB 1293

The point is not the particular retailer. The point is that every week retail stores all over North Dakota are guilty of class B misdemeanors with impunity. Business owners are brazenly ignoring the rights and privileges of their employees guaranteed in the US Constitution and the North Dakota Century Code. Pending the complete repeal of the Blue Laws, this will become more prevalent. Its imperative that you pass HB 1293 unanimously.

As Representative Adams reminded us two weeks ago, North Dakota is much more diverse than at the time of the writing or the original Blue Laws. Today, the class B misdemeanor violation of the Century Code 34-06-05.1 is being violated not only on Sunday but on other days of the week as our great state becomes populated with a greater diversity of religious traditions and creeds, and their various days of worship. We need to protect the religious freedom of all North Dakotans.

Cost of Business

With the pending repeal of the Blue Laws with HB 1097, we need HB 1293 because the result of such a change will be an increase to the cost of doing business for every store extending its hours on Sunday. The same Fargo retailer I mentioned earlier also explained what happened when Moorhead, Minnesota extended their business days on Sunday. Referring to his Moorhead store, He explicitly stated, "Our expenses went up, our profits did not."

Every business owner strives to minimize the cost of doing business to maximize profits. As all of you are aware, any business owner who doesn't seek to reduce the cost of doing business will not stay in business long.

Every store expanding their hours of business on Sunday will increase their expenses. Besides higher energy bills, there is the additional cost of wages to cover the workers additional hours. The business owner could hire additional workers to cover the extra hours. However, it is cheaper to have current employees cover the additional hours than pay all of the other taxes and healthcare cost of additional employees.

If employers already are violating Century Code 34-06-05.1 to cover business hours on Sunday, what will be the net result of needing to include the extra hours of the employees? The repeal of the Blue Laws will necessarily bring an increase of violations to our citizens right to weekly religious practice. HB 1293 can help make the enforcement of our currents laws protecting our religious freedom.

By passing both HB 1097 and HB 1293, there is a possible win for both business owners and their employees. Employers will have greater freedom in how to run their business and employees will have greater freedom regarding the days they work and worship their God.

Please help preserve the moral and spiritual well-being of all North Dakotans regardless of religion or creed by passing HB 1293 unanimously.

Hanh Chairman Keiser and members of the House IBL Committee.

For the record, my name is Carel Two-Eagle & I testify in support of HB 1293, but this bill needs amending.

I am a Pipe Keeper. Ch'annunpa yuha wamani ye – I Walk with a Pipe. Ch'annunpa wakan ye – The Pipe is holy. I am a Sun Dancer. The Sun Dance is where we who Keep Ch'annunpa learn to keep Them properly & where we learn to do the ceremonies we do with them. The Sun Dance is our most sacred ceremony.

When a person agrees to Keep a Pipe, s/he makes an obaghi – a sacred commitment on their soul. To Keep the Pipe in a good way; and to go thru the four year commitment without a break. A commitment is not a hobby. Our Pipes are tied to our souls. They - & the prayers that focus each one – are not mere things. Their sacredness is not a mere personal or cultural perspective – it is the result of thousands of years of experience and observation.

But – to make obaghi means the supplicant must fulfill the requirements of the Sun Dance every year for four years. Each year requires a number of things that may differ, but all have one thing in common – the supplicant must be at the Sun Dance for 2 weeks each year. Let's say 2 days for travel, then 4 days of sacred isolation, then 4 days of humbleness, when the Sun Dancer comes back from being in the ceremonial way to being in the ordinary-world way. That's 10 days.. if the Sun Dancer can travel to & from the Sun Dance in 1 day each way.

We who Keep Pipes live with a list of requirements. Some are taboos, others are not. But I have had to survive in business, because even when an employer said I was guaranteed the necessary time off, when the time came, the same employer said I "could not" go. So, I quit. I had a commitment. If my word is not my bond, I'm not much of a person – even less of a spiritual guide. Pipe Keepers are spiritual guides. The Teaching about us is, "As the Keeper of a Pipe lives, so live all the People who are in that Pipe's sphere of influence".

I'm hardly the only one with this problem – I started a program called "Saving Lakota Off the Rez". Our teacher is a certified Lakota Language instructor. He has a very hard time getting any kind of job, so he works a string of "disposable" jobs – all of them far below his skill level. He has no problem with his job, except that he must be gone for 2 weeks every summer during the Sun Dance season.

Jan 22, 2019 HB 1293

Attachment 2
Page 2

The Sun Dance season is from the first day of summer thru the first full moon of August. Some of us have Danced for decades, even after finishing our obaghi. Whether a person continues to Dance or not varies with their prayer, but during their 2-week period, they are focused on their obaghi every year for the rest of their life.

You would have no reason to know this, of course – it's not your religious or spiritual Way. But it is ours, and the US Constitution and the Bill of Rights guarantee our rights to practice them without modification to the preferences of something as insignificant as a job or an employer. The spiritual far out-ranks the temporal, after all. If this were not true, we would have no reason to pray. Christianity is not the “only” Way or the “best” Way. It is one Way among many – all made by the same Creator; and all have equal right to be shown respect.

In the testimony of those who are against this bill, one man spoke about farming and how farmers “couldn't” get their crops in if they took Sundays off. I guarantee you, they can & they do. I shod horses for a community of Amish for many years. They NEVER did a lick of work on Sunday. All foods were eaten cold. They hired “English” (ie, non-Amish) to feed & water livestock. They did not even gather eggs. The same is true of the Mennonites & Hutterites. I've never even heard of one of those having a problem being successful farmers. Believe me, they said anything & everything within my hearing, knowing I could hear them.

I did not bring amendment(s) but I will strive to write something & get it to you, if you will accept it. Thank you for hearing me in a good way now. If anyone has any questions, I will be happy to answer them, and I am always available to work with any of you to amend this bill. Mitakuye oiasin. (All {are} my relatives)

*** Amendments - Page 1 Lines 12 – 17 from the words beginning “An employer is not required...” through the end of Line 17: Strike this. This contradicts the rest of the bill and negates what the bill wants to do.

Page 2 Line 6 – beginning right after “week,” insert “or, in the case of Traditional Indians, such as those who Sun Dance or practice Okeepa, a year, since the time is for participating in a Sun Dance or similar annual ceremony, since the season for these is from the first day of summer through the August full moon.”

Page 2 Line 21 – Should be changed to “A retail business may not be required to be open on Sunday or the weekly Holy Day of Jews or Muslims or any other religion having such day”.

Attachment 3
Jan 22, 2019
Page 1

Add a new subsection to Section 15.1-19-03.1:

Neither a public school nor the North Dakota high school activities association may penalize, discipline, or restrict participation in a public school or North Dakota high school activities association administered activity solely because the student was absent for an activity, practice, or rehearsal due to religious observance.

Attachment 4
Page 1

HB 1293



Greater North Dakota Chamber
Bill Number
Senate Industry, Business and Labor
Representative Keiser - Chair
Date of Hearing - January 21, 2019
22

Chairmen and members of the committee, my name is Matt Gardner and I am here today representing the Greater North Dakota Chamber (GNDC). We are proud to say the Greater North Dakota Chamber is the largest statewide business advocacy organization in the state. We stand in opposition of House Bill 1293 and ask for a do not pass.

This bill would remove the ability for employers to claim an undue hardship in the case when the employee would like their day of rest during any 7-day period. In GNDC's opinion this does not take into account the needs of our employers in the state. I think of the coal and powerplant industry to the North of here and how their shiftwork schedules could be 10 days on then 10 days off or any other myriad of scheduling. I also think of other businesses like the construction trades and agriculture who have seasonal business models. It is crucial to those industries to have their labor force when it is needed. Adequate staffing during specific periods relates to their production needs but also safety. When our employers are currently struggling to find employees, adding these types of mandates are making the business climate worse not better. I think it is important to view this bill through the lens of our employers and give them the flexibility they need to stay productive and safe. For these reasons GNDC would like to see the law stay as it sits currently. I as for a do not pass on HB 1293

Champions  Business

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HOUSE BILL 1293
House Industry, Business and Labor Committee
January 22, 2019

TO: Representative George Keiser, Chairman, House Industry, Business and Labor Committee, and Committee Members

I, Travis Engelhardt, Director of Human Resources for the Department of Corrections and Rehabilitation (DOCR), submit this testimony against House Bill 1293 on behalf of the DOCR.

Law enforcement and corrections employers, including the DOCR, are exempt from certain overtime requirements under the federal Fair Labor Standards Act (FLSA). Under what is commonly referred to as the FLSA 7(k) exemption (29 CFR Section 553.211) the DOCR has the ability to define a correctional officer or parole and probation officer's work period between 7 and 28 days. This means that the standard 7 day 40-hour workweek does not apply to the DOCR for correctional officers and parole and probation officers, if an alternate work period is chosen. The purpose of this exemption from standard overtime requirements is to allow public safety organizations like the DOCR to manage overtime spending by utilizing a work period longer than the standard 7 days. Through this exemption the DOCR is able to more effectively manage overtime spending to save the state money.

In fact, the DOCR uses work periods other than the standard 7 day 40-hour workweek for both correctional officers and parole and probation officers. As an example, DOCR correctional officers work a schedule that requires 7 work days in a row. Under this bill, the DOCR would be forced to change long standing scheduling practices for several hundred employees. In order to comply with this bill, the new schedule could cause the DOCR to incur more overtime in order to ensure all shifts are covered within the DOCR's secure correctional facilities. In addition, the DOCR's hardworking and dedicated correctional employees have their personal lives set around their work hours and scheduled rotations. A new schedule and rotation would need to be implemented relatively fast in order to comply with the requirements of this bill.

This bill has the potential to disrupt scheduling and operations in the DOCR's secure correctional facilities and prohibit the DOCR from requiring licensed peace officers (Parole and Probation Officers) from responding to situations involving threats to public safety, if it happens to be the seventh day the officer would work. Further, the removal of the "undue hardship" language on page 2, lines 3 through 11, requires the DOCR to accommodate requests for time off for regular worship service. Although it is rare that a correctional officer or parole and probation officer is not allowed time off for rest or to attend worship service, taking away the DOCR's ability to manage leave requests in order to adequately staff secure correctional facilities and ensure parole and probation services and a law enforcement response in an emergent situation impacts the DOCR's ability to enhance and ensure public safety in North Dakota.

In closing, HB 1293 has the potential to add costs and inhibit the ability to adequately staff the DOCR's secure correctional facilities, which will lead to safety risks. The DOCR respectfully requests your vote of do not pass on House Bill 1293.

TESTIMONY
HOUSE BILL 1293
INDUSTRY BUSINESS AND LABOR COMMITTEE
JANUARY 21, 2019

Mr. Chairman and members of the House Industry Business and Labor committee my name is Mike Gerhart, Executive Vice President of the North Dakota Motor Carriers Association. I am here to testify in opposition of House Bill 1293. It is important employees are protected from discriminatory practices in the workplace and current law provides protection.

I oppose House Bill 1293 because it removes the undue hardship exception provided to employers who are currently legally obligated to make reasonable accommodations specific to one day of rest in seven.

The trucking industry is federally regulated specific to the hours of service a driver can operate. This legislation would make it increasingly difficult to operate efficiently and effectively. Efficiency is important due to a driver shortage and effectiveness ensures on-time delivery. On time delivery is important regardless if it's propane in the winter, anhydrous in the spring, or hay in the summer. Forty-six percent of communities in North Dakota get their products delivered exclusively by truck and they expect on-time delivery.

I ask that you consider the impacts of this legislation and give House Bill 1293 a DON'T PASS out of committee.

Mr. Chairman, this concludes my testimony and I would be happy to answer questions.



House Bill 1293
Testimony of Brady Pelton
House Industry, Business and Labor Committee
January 22, 2019

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Brady Pelton, government affairs director of the North Dakota Petroleum Council. The North Dakota Petroleum Council represents more than 500 companies in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oilfield service activities in North Dakota. I appear before you today in opposition of House Bill 1293.

Requiring an employer to offer at least twenty-four consecutive hours of time off for rest or worship for each seven-consecutive-day period, this bill is highly impactful to the oil and gas industry. This bill is especially problematic for exploration companies, which rely on a variety of shiftwork schedules to ensure meeting project demands. As an example, several oil and gas exploration companies utilize a shiftwork schedule where a drilling crew will work twelve hours in each of ten days and then receive ten days off work. Others utilize a seven days on, seven days off scheduling system. Regardless of the span of work days, these workers largely appreciate the ability to work in such a block of time. This type of shiftwork scheduling structure is used within the industry throughout the country, and is proven to increase safety on the worksite, increase employee job satisfaction, and stabilize the labor force in an employment sector critical to our state.

To be clear, NDPC is not opposed to religious liberty and the protections currently in place to safeguard that liberty in the state. However, employees in the oil and gas sector have chosen to be in the type of shift-based career mentioned above, and we respectfully request a Do Not Pass recommendation on House Bill 1293 to honor their choice. I would be happy to answer any questions.



Cheryl Riley
President, External Affairs
Northern Plains States

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Attachment 8

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January 15, 2019

Oppose House Bill 1293

Hon. George Keiser, Chair

House Industry, Business and Labor Committee

Mr. Chairman and members of the Committee,

My name is Cheryl Riley, and I'm President of AT&T Northern Plains

AT&T would like to express concern over House Bill 1293, relating to employer's discriminatory practices and a mandatory one day of rest. As proposed, the bill could be interpreted as eliminating the undue hardship exception to an employer's obligation to provide reasonable accommodations to an employee whose religious beliefs or practices conflict with a work requirement.

Federal law prohibits employers with at least 15 employees, as well as employment agencies and unions, from discriminating in employment based on race, color, religion, sex, and national origin. It also requires an employer, once on notice that a religious accommodation is needed, to reasonably accommodate an employee who's sincerely held religious belief, practice, or observance conflicts with a work requirement, **unless doing so would pose an undue hardship.**

An undue hardship will be found where the accommodation diminishes efficiency in other jobs, infringes on other employees' job rights or benefits, impairs workplace safety, or causes co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work. Whether the proposed accommodation conflicts with another law will also be considered. A proposed religious accommodation also would pose an undue hardship if it would deprive another employee of a job preference or other benefit guaranteed by a bona fide seniority system or collective bargaining agreement.

North Dakota Century Code section 14-02.4-03(2) also makes it a discriminatory practice to refuse to make a reasonable accommodation unless that accommodation would disrupt or interfere with the employer's normal business operations, threaten an individual's health or safety, contradict a business necessity of the employer, or impose an undue hardship on the employer. However, the proposed amendment to this section as set out in HB 1293 eliminates the undue hardship exception provided to employers under federal and state employment law.

One page 2, starting on line 2, the bill can be read to require employers to accommodate the religious beliefs and practices of an employee under all circumstances, regardless of undue hardship. Any accommodations that impose undue hardships in the workplace are **eliminated** altogether. That simply does not make sense.

HB 1293

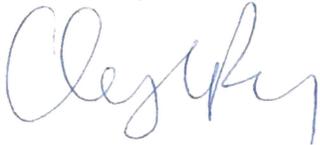
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Page 2

Moreover, it simply is not feasible to require employers to accommodate employees' religious beliefs and practices under all circumstances. Indeed, in many instances, an effort to accommodate an employees' religious beliefs, even a belief to have a specific day off for worship, would not only be economically not feasible for the employer, but might also infringe on other employees' job rights or benefits, as it may require an employee to carry a much heavier workload and/or infringe on the seniority rights provided by that employee under a collective bargaining agreement.

AT&T believes that HB 1293 in its current form directly counters the federal exception to accommodations that pose undue hardships on employers and therefore infringes on an employers' business practices in an unfair manner. We respectfully ask that the bill receive a "do not pass" recommendation from this committee, and we would be happy to discuss this bill further.

Thank you for your consideration.

Sincerely,



Cheryl Riley
AT&T President External Affairs, Northern Plains States

Jan 23, 2019

HB 1293

Attachment 1

Add a new subsection to Section 15.1-19-03.1:

Neither a public school nor the North Dakota high school activities association may penalize, discipline, or restrict participation in a public school or North Dakota high school activities association administered activity solely because the student was absent for an activity, practice, or rehearsal due to religious observance.

unless the absence unreasonably interferes with a ~~school~~ school-sponsored event,

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1293

- Page 1, line 21, overstrike "An" and insert immediately thereafter "Except in cases of emergency, an"
- Page 2, line 3, remove the overstrike over "~~unless the employer can demonstrate that to do so~~"
- Page 2, line 4, remove the overstrike over "~~would constitute~~"
- Page 2, line 4, after "~~undue~~" insert "a severe financial"
- Page 2, line 4, remove the overstrike over "~~hardship on~~"
- Page 2, line 4, remove the overstrike over "~~the employer's business.~~"
- Page 2, line 5, after the underscored period insert "Even in cases of severe financial hardship, the lack of accommodation may not be a regular practice."
- Page 2, line 6, remove the overstrike over "~~unless~~"
- Page 2, line 11, after "~~request~~" insert "the employer and employee have agreed in writing, at hiring, to waive this requirement"
- Page 2, line 11, remove the overstrike over the overstruck period
- Page 2, line 14, after "day" insert ", either under special circumstances or as a regular practice,"
- Page 2, line 14, after "stating" insert "; or that honoring the employee's request would cause the employer substantial economic burdens"
- Page 2, line 17, remove the overstrike over "3."
- Page 2, line 17, after the overstruck period insert: "As used in this section, an "emergency" is a situation that:
- a. Poses an immediate risk to health, life, property, or environment;
 - b. Has caused loss of life, health detriments, property damage, or environmental damage;
 - c. Has a high probability of escalating to cause immediate danger to life, health, property, or environment; or
 - d. Impedes or inhibits an essential function necessary for the operation of a business."

Renumber accordingly