

**2021 SENATE POLITICAL SUBDIVISIONS**

**SB 2188**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

SB 2188  
1/21/2021

A BILL for an Act to create and enact a new section to chapter 11-10 and a new section to chapter 40-05 of the North Dakota Century Code, relating to the authority of a political subdivision to regulate the sale of consumer merchandise.

**Chairman Burckhard** opened the hearing on SB 2188 at 10:45 a.m. All members present: Senator Burckhard, Senator Anderson, Senator Oban, Senator Kannianen, Senator Heitkamp, Senator Lee, Senator D. Larson.

### Discussion Topics:

- Enforcement V.S. right of the community
- Authority possibilities and limitations for home rule
- Consumer merchandise definition

**[10:44] Senator Meyer, District 18.** Introduced SB and provided testimony #2068 in favor.

**[10:47] Mike Rud, President, North Dakota Petroleum Marketers and ND Retail Association.** Provided testimony #2142 in favor.

**[11:01] Matt Bjornson, Co-owner of Bjornson Oil Company.** Provided testimony #2144 in favor.

**[11:06] Don Larson, on behalf of the National Federation of Independent Business (NFIB).** Provided testimony #2146 in favor.

**[11:09] Stephanie Dassinger, Deputy Director, North Dakota League of Cities.** Provided testimony in opposition. #4227

### Additional written testimony: (3)

**John Dyste, President, North Dakota Grocers Association.** Provided written testimony #2141 in favor.

**Douglas Beech, Legal Counsel, on behalf of Casey's General Store.** Provided written testimony #2006 in favor.

**Brian Billingsley, Director, Community & Economic Development, City of Minot.** Provided written testimony #2041 in opposition.

**Chairman Burckhard** closed the hearing on SB 2188 at 11:20 a.m.

*Patricia Lahr, Committee Clerk*

January 21, 2021



## North Dakota Senate

State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0360

Senator

Scott Meyer

District 18

1624 Seventh Avenue North  
Grand Forks, ND 58203-3010

218-791-7655

scottmeyer@nd.gov

Committees:

Finance and Taxation

Government and Veterans

Affairs

Mr. Chairman and members of the political subdivisions committee.

I'm introducing SB 2188 on behalf of the ND Retailers Association. They'll be stepping up after me to explain their support.

This bill is pretty straightforward, it prohibits cities and counties from restricting businesses from the sale of products that can be legally sold in the state.

The 66<sup>th</sup> legislature passed similar legislation regarding the prohibition of political subdivisions from restricting the use of auxiliary containers/plastic bags. Similarly, the last legislature passed a law restricting political subdivisions from raising the minimum wage higher than the state.

Finally, this bill is meant to avoid any confusion for our business when it comes to the sale of the products that the state has deemed legal.

I ask for a Do Pass recommendation, and I'll stand for any questions.



ND Petroleum Marketers Association  
ND Retail Association



**Testimony- SB 2188**

**January 21, 2021- Senate Political Subdivisions**

Chairman Burckhard and Members of Senate Political Subs Committee:

For the record, I'm Mike Rud, President of the North Dakota Petroleum Marketers and ND Retail Association. On behalf of NDPMA and NDRA and well over 1,000 retail store fronts this association proudly represents, I stand before you urging a **"DO PASS" recommendation on SB 2188**. Our reasoning for this support is simple: A Business should not be told by local governing bodies what products it can and can't offer to consumers.

Nationally, for well over the past decade now, we have seen local governments becoming more and more intrusive when it comes how businesses operate. This has ranged anywhere from the size of fountain pop a retailer can sell in a certain city to the type of tobacco products a business can sell to the type of guns another retailer can sell in a certain city. In addition, this nation has witnessed numerous cities imposing stringent taxes on things like sugary products and salty products because they simply could and because local authorities thought it best for the citizens.

ND retailers have not been immune to this "slow creep" of government overreach. Last session, the Legislature enacted a statute banning local ordinances relating to plastic bag bans. It also passed language preempting local municipalities from setting minimum wage requirements. These were all good pieces of legislation that maintained a businessowner's right to operate as they see fit.

The American retailer is the backbone of the nation and state's economy. These folks are good business operators, especially here in ND. Retailers are conscientious about doing the right thing while still meeting customer demands.

Unwarranted or unneeded local ordinances are problematic for retailers for several reasons. Local Preemption of the sale of certain retail goods creates a confusing patchwork of rules and regulations for a business operating in different cities. Secondly, business livelihoods are negatively impacted, as customers look to another city or shop online to access a product, furthering hurting brick and mortar stores.

These ordinances also hurt the consumer as they deny the customer of their rights to purchase legal products of their choice with their preferred businessowner. It also causes strained relationships with the business community and customers as many shoppers are unaware of local ordinances impacting consumer purchases. In the end, these local ordinances create a lot of bad will between retailers and local government.

Finally and of equal importance, it puts an added burden on law enforcement officers to monitor businesses and citizens for any potential violations of local codes.

Bottom line, Pre-emption involving the state's assertion of its authority in key policy areas either setting standards for or limiting local action, will help protect state budgets, **consumers, and businesses from adverse consequences of bad local rules.**

## TESTIMONY SB 2188

## Senate Political Subdivisions Committee

## North Dakota Senate

Chairman Burckhard and Members of the Committee,

Thank you for the opportunity to testify in favor of SB 2188. My name is Matt Bjornson, Co-owner of Bjornson Oil Company, a third-generation family owned business based in Cavalier, ND. The challenges of running a small business are many. Complying with and being aware of the vast number of regulations and rules on the National, State, and local level is the most challenging part of my job. As a family business that puts our family name above the door, compliance with all of those regulations is important.

SB 2188 is a good step forward in making the sales and marketing of products we sell across all of our communities where we do business uniform. SB 2188 addresses a problem that already exists in our state, a problem which can get worse. I don't think we want to get to the point where New York was, where the mayor thought regulating the size of soda pop drinks was important. In most types of consumer merchandise retail stores, the participation in vendor programs is an important part of buying the product at the best possible price and being able to participate in consumer promotions with the participation of the vendor or manufacturer. Uniform regulations make that process much easier for those of us with locations in different municipalities.

Finally, even in the small town where I live, in the past I have found it frustrating to keep track of what the City is up to. Utilizing the "emergency" clause in the open meeting laws, past Mayors and councils have bypassed the norms of operating in the light of day and made decisions or purchases which if known about by the general public would have never happened. Trying to keep up with local government entities 100 or 200 miles away is next to impossible for a small business such as ours.

The ask here is simple. Uniformity, Clarity, Fairness. Not a hodgepodge of rules and regulations that hamper small business in North Dakota. If a particular item of consumer merchandise needs to be regulated then the place to consider that is here at the state capitol, in the light of day. Thank you.



Senate Political Subdivisions Committee

01/21/21

SB 2188

Chairman Burckhard and committee members, my name is Don Larson and I am speaking today on behalf of the National Federation of Independent Business (NFIB). NFIB is a non-profit, non-partisan organization and is the nation's largest small business advocacy group.

In North Dakota we represent more than 2,000 small businesses. Our average member has 10 employees and gross sales of approximately \$500,000 per year.

On behalf of our membership in North Dakota, we ask that you give a Do-Pass recommendation to Senate Bill 2188. This bill will maintain a level playing field across the state and prevent a potential patchwork of inconsistent regulations. These regulations will increase the costs and the regulatory burden on small businesses without proven benefits.

We appreciate the efforts of the sponsors of this legislation to stop additional mandates that could be placed on our members.

January 21, 2021  
House Judiciary Committee  
SB 2188  
Rep. Randy Burckhard, Chair

For the record, I am Stephanie Dassinger. I am appearing on behalf of the North Dakota League of Cities. I am the deputy director and attorney for the League.

The League of Cities opposes SB 2188 because it amounts to unnecessary preemption and the language of the bill has very broad implications.

The North Dakota League of Cities members have adopted a resolution against preemption. This bill is here because another city in another state decided it was a good idea to pass a bill regulating the size of soda that is sold in stores. It is not appropriate to pass a bill preempting North Dakota cities every time a city in another state does something someone does not like.

Additionally, the language of this bill is very broad. It says that a city “may not adopt an ordinance, motion, resolution, or amendment that sets standards or requirements regarding the sale or marketing of consumer merchandise.” This appears to affect a city’s ability to apply its zoning code, design standards for a neighborhood, and building code to businesses that sell consumer merchandise. This bill appears to have an impact on a city’s ability to tailor liquor licenses to the city’s specific needs. A final question has arisen about whether this bill would affect a city’s ability to regulate placement of signage for businesses selling consumer merchandise.

For the reasons stated above, the North Dakota League of Cities respectfully requests a Do Not Pass recommendation on SB 2188.



3155 Bluestem Dr #378, West Fargo, North Dakota 58078 • Phone (701)223-4106 •  
[www.ndgrocers.com](http://www.ndgrocers.com)

## **Testimony- SB 2188**

### **January 21, 2021- Senate Political Subdivisions**

Chairman Burckhard and Members of Senate Political Subs Committee:

On behalf of the North Dakota Grocers Association (NDGA) I ask that you give a “Do Pass recommendation on SB 2188. NDGA represents the retail grocery stores in the state as well as over 80 wholesalers, distributors and vendors. We feel that our businesses should not be told by local governing entities what products (that are legal to sell) it can and can’t offer to consumers.

North Dakota residents do not need, nor want, interference in choosing what size fountain soda to buy or how much salt can be on pretzels. Retailers and suppliers need consistency from the state on issues like this. There are many examples of cities such as Fargo and West Fargo, Bismarck and Mandan, and Beulah and Hazen where one cities action can unfairly impact the other.

North Dakota citizens and retailers are the best at deciding on what to purchase.  
Please vote Yes on SB 2188

John Dyste

President

North Dakota Grocers Association

2006



Sender's Direct-Dial Telephone Number: 515-965-6284  
Fax Number: 515-965-6160  
E-mail Address: doug.beech@caseys.com

January 20, 2021

Members of the North Dakota  
Senate Political Subdivisions Committee

RE: Casey's General Stores, Inc.'s Support of SB2188

Dear Senators:

I am writing on behalf of Casey's General Stores, Inc. ("Casey's") in support of SB2188. Casey's is a publically traded convenience store chain operating 30 convenience stores throughout the State of North Dakota. Dealing with numerous stores in different municipalities makes it difficult for Casey's to manage issues that are different from municipality to municipality. This has been especially frustrating in the areas of tobacco and alcohol regulation. Based on these concerns, we ask that you pass Senate Bill 2188 to alleviate this complexity on behalf of North Dakota retailers.

If you have any questions or need any additional information, please feel free to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Douglas M. Beech".

Douglas M. Beech  
Legal Counsel and Director of Government Relations

DMB/slc  
pc: Mike Rude



North Dakota Senate Political Subdivisions  
Chairman – Senator Randy Burckhard  
January 20, 2020

**Testimony**

**By: Brian K. Billingsley, AICP**  
**Community & Economic Development Director**  
**Email: [brian.billingsley@minotnd.org](mailto:brian.billingsley@minotnd.org)**  
**Phone: 701-857-4147**

**Senate Bill 2188**  
**Urging a "Do Not Pass" Recommendation**

I am writing on behalf of The City of Minot to express our **opposition** to SB 2188 (Consumer Merchandise). We assert the bill is too broad and will have many unintended consequences that will negatively affect our community.

The provision limiting cities from regulating sales of commercial merchandise could disrupt residential neighborhoods. This bill would prevent cities from curbing recurrent yard sales and garage sales. We would have no control over their frequency and operating hours. In addition, this bill would neutralize municipal home occupation rules. Undesirable commercial businesses would be welcome into quiet residential neighborhoods. We would not be able to intervene when a homeowner calls us to register a complaint about a disturbance in his/her neighborhood.

Some people may interpret this legislation as a means to undermine municipal standards that cities apply to all new commercial developments (i.e. landscaping, building design, and parking requirements). These standards help improve the appearance of our community and attract customers and desirable businesses to our centers of commerce.

This legislation may also open the door to the unnecessary marketing of business ventures in non-commercial zones. The provision limiting cities from marketing commercial merchandise could be interpreted as a loophole to allow commercial advertising through the placement of billboards in residential neighborhoods.

For these reasons, we strongly urge your committee to recommend a "do not pass" on SB 2188.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian Billingsley". The signature is fluid and cursive, with the first name "Brian" and last name "Billingsley" clearly distinguishable.

Brian K. Billingsley, AICP  
Community & Economic Development Director

Cc: Mayor Shaun Sipma  
Minot City Council  
Harold Stewart, City Manager  
Shane Goettle, Special Assistant City Attorney  
Blake Crosby, North Dakota League of Cities

# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

SB 2188  
2/4/2021

A BILL for an Act to create and enact a new section to chapter 11-10 and a new section to chapter 40-05 of the North Dakota Century Code, relating to the authority of a political subdivision to regulate the sale of consumer merchandise.

**Chairman Burckhard** opened the committee discussion on SB 2188 at 2:27 p.m. Senators present: Burckhard, Lee, Larson, Kannianen, Oban, Heitkamp. Senator Anderson is absent.

### Discussion Topics:

- Home rule integrity

**[2:28] Stephanie Dassinger, on behalf of The North Dakota League of Cities.**

**[2:36] Senator Heitkamp, on behalf of Darcie Huwe, Financial Director/Auditor, City of Wahpeton.** Provided testimony #5515 in opposition.

**Senator Lee** moves **DO NOT PASS**

**Senator Oban** seconded

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	ABSENT
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	N
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

The vote will be held open for Senator Anderson to record his vote  
**Senator Burckhard** will carry SB 2188.

**Additional written testimony:** N/A

**Chairman Burckhard** closed the discussion on SB 2188 at 2:42 p.m.

*Patricia Lahr, Committee Clerk*

TESTIMONY IN OPPOSITION OF SB 2188 RELATING TO THE AUTHORITY OF A  
POLITICAL SUBDIVISION TO REGULATE THE SALE OF CONSUMER MERCHANDISE

Senate Political Subdivisions Committee  
Meeting Scheduled at 2:15 PM 2/4/2021.

Honorable Chairman Burckhard & Senate Political Subdivisions Committee Members:

SB 2188 A BILL for an Act to create and enact a new section to chapter 11-10 and a new section to chapter 40-05 of the North Dakota Century Code, relating to the authority of a political subdivision to regulate the sale of consumer merchandise.

I strongly **OPPOSE** the prohibition on a city regulating the sale or marketing of consumer merchandise for the following reasons:

1. The definition of consumer merchandise is poorly defined, the retail sale of alcoholic beverages is currently regulated by zoning, business licensing and health ordinances in our city. Is it possible that an individual can sell alcohol from their home without oversight from local government? Bottled spirits, microbrew beer or wine can be sold to neighbors? Currently fireworks can only be sold in business/industrial zoned districts, can a neighbor store tons of pyrotechnics in their garage for sale to the neighbors?
2. The city currently regulates the activities of businesses operating within our municipality to protect our residents from unsafe and or criminal enterprises. An itinerant merchant license provides the city the knowledge of who is conducting business within our city and the contact information in the event one of our residents has a complaint, question or has been the victim of fraud.
3. Each city is unique and should be able to adapt and adjust regulations as necessary, circumventing local control can enable small problems to become large insurmountable problems.

Please VOTE NO on SB 2188

Thank you for your consideration and continued public service!

Submitted with high regard;

Darcie Huwe, Finance Director/Auditor  
City of Wahpeton  
1900 4<sup>th</sup> St. N.  
Wahpeton, ND 58075-3423  
701-642-8448  
[darcieh@wahpeton.com](mailto:darcieh@wahpeton.com)



# 2021 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Sakakawea, State Capitol

SB 2188  
2/5/2021

Relating to the authority of a political subdivision to regulate the sale of consumer merchandise.
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**Chairman Burckhard** called the committee to order on SB 2188 at 11:04 AM.  
Senators present: **Burckhard, Anderson, Heitkamp, Kannianen, Lee, Larson, Oban.**

### Discussion Topics:

- Recording Senator Anderson's vote due to his absence

**Chairman Burckhard** re-opened the hearing on SB 2188 to record Senator Anderson's vote. The previous committee vote was 5-1-1. He preferred to stay recorded as an absent vote.

Voting YES: Senators Burckhard, Heitkamp, Larson, Lee and Oban

Voting No: Senator Kannianen

Absent: Senator Anderson

**Chairman Burckhard** adjourned the hearing at 11:06.

*Rose Laning for Patricia Lahr, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2188: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **DO NOT PASS** (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2188 was placed on the Eleventh order on the calendar.