



2021 Legislative Final Report



Valued Association Members:

I'm very happy to say the 67th ND Legislative Assembly has gaveled out. It was another very good year for ND Businesses. At the peak of the session, the Association was likely tracking close to 100 bills. Thanks to your support and the work of the Association office and its members, the retail business sectors in ND will continue to operate in a very favorable economic climate moving into the next biennium. Your VOICES WERE HEARD!

Your Associations sponsored two bills during the past session. Both were related to retail sales:

SB 2166: NDRA's hallmark piece of legislation, SB 2166 which enhances the state's **retail theft penalties** and in particular, goes after repeat offenders. This bill has been signed by Governor and is now law in ND.



SB 2166 Senator Diane Larson - Attorney General Wayne Stenehjem
Senator Shawn Vedaa - Mike Rud, NDRA - Jeff Hinz, Kirkwood Ace
Jennifer Wilson, Kirkwood Mall - Eric Goerd, Target - Tyler Halm, Scheels

SB 2188: was a bill the retail community was pushing relating to state pre-emption on the sale all consumer merchandise. **We were attempting to stop local governments from using ordinances to stop the sale of any consumer goods.** In 2017, the Associations pushed through state pre-emption on both gas and tobacco taxes, much to the dissatisfaction of the ND League of Cities and ND Association of Counties. We were meant with strong opposition to SB 2188. It failed in the Senate early on in the session.

Key Tax Bills:

Two **tobacco tax** bills which would have raised the state excise tax on a pack of cigarettes by over \$1. **HB 1403** and **HB 1422** were given "DO NOT PASS" recommendations by the House Finance and Tax Committee and soundly defeated on the House floor by wide margins.

SB 2189: Imposing a tax on **electronic smoking devices**. This bill was turned into a potential legislative Management study in the House. The idea would be to study reduced harm e-cig products.

Two other tobacco bills of note:

SB 2156: This was the bill to **raise the legal age for purchasing tobacco** products in ND to 21, mirroring federal law. Passed overwhelmingly in both Chambers. Has been signed and is law in ND.

SB 2190: Relating to **prohibiting on-line sales of tobacco** products. NDPMA testified this language essentially already existed in in ND statute and FDA code. The bill failed in the Senate by a wide margin.

HB 1464: Relating to **tax imposed on motor vehicle fuels** and special fuels. Initially, the bill called for a 2 cent/gallon gas tax increase in 2022 and another 2 cent/gallon increase in 2023. It was changed in committee to a one-time 6 cent proposal. The Association worked the House floor to get it reduced to a one-time 3 cent/gallon tax increase. It passed over to the Senate where the Association stood as the lone business opposition to any type of tax increase. The bill failed in the Senate by a 29-18 margin.

Bottom Line: NO new business taxes in the 2021-2023 biennium.

Other Key Business Bills:

HB 1175: Covid-19 **liability protection** for businesses. This bill provides ND Businesses immunity from COVID 19 liability claims from employees, customers or other parties entering a business establishment. Supported by a large number of business associations from across the state. Passed easily in both Chambers. Signed into law by the Governor.

There were numerous bills relating to **mask mandates** or requirements. The business community was essentially able to defeat them all. [HB 1323](#) garnered the most publicity late in the session. It passed both Chambers, but was amended in the Senate to prohibit only the Governor or State Health Director from enforcing mask mandates. Governor vetoed the bill, but both the Senate and House overrode the vetoes.

Bottom line: Businesses can still institute a mask mandate at retail outlets if they so choose to do so.

[HB 1299](#): Prohibiting a retail establishment from **refusing to accept cash** as payment. NDRA/NDPMA testified in opposition. Failed by a wide margin in the House.

[HB 1414](#): relating to a deduction of **retailer sales tax** remitted. Retailers with 16 employees or less would be allowed to keep all state sales taxes collected on their first \$100,000 of sales during this current year. Failed by a wide margin in the House.

[HB 1341](#): State **minimum wage increase**. Association Opposed. Failed in the House.

[HB 1408](#): Relating to the **definition of wages** for purposes of workers' compensation benefits. Association opposed. Failed in the House.

[SB 2298](#): Relating to providing **sales tax exemption cards** to enrolled tribal members. Failed in the Senate.

[HB 1434](#): Relating to **compensation history** of prospective employee. Association Opposed. Failed in the House.

[HB 1441](#): Relating to a paid **family medical leave** program and an income tax credit for contributions paid into the paid family medical leave fund on behalf of eligible employees. Association Opposed. Failed in the Senate.

[HB 1398](#): Relating to prohibitions on political subdivisions regulating paid **family leave**. Association supported. Passed both Chambers.

[HB 1330](#): This is the **data privacy** bill. Association Opposed. Failed in the House.

[HB 1339](#): relating to **dangerous weapons**. relating to dangerous weapons. This bill removes language from the NDCC declassifying BB guns, air rifles or CO2 guns from the dangerous weapons category. This bill if passed could certainly have impacted the type of weapons individuals could carry in a retail setting. Association Opposed. Failed in the House.

[HB 1148](#): This bill relates to **E-bikes** distributed, manufactured and operated in the state. Association supported. Bill passed both Chambers.

[SB 2220](#): Relating to the dispensing and selling of **alcoholic beverages on Sunday**. Changes legal selling time of alcohol to 8 a.m. on Sundays. Bill Passed both Chambers. Signed into law.

[HB 1419](#): This is another attempt at charging a **utility fee** in lieu of special assessments. It's supposed to be more business friendly to larger retail properties. In a nutshell if passed, HB 1419 will essentially allow cities in ND to take to the voters a proposal to replace special assessments with a continuing utility fee to pay for ongoing local street maintenance work. Any city proposal would need 60% approval from local voters to move forward. This bill passed both Chambers.

[SB 2070](#): This is the "mini superfund" bill being sought by the Department of Environmental Quality for **cleaning up spills of hazardous materials**. NDPMA had some concerns with the bill in its original form. NDPMA and DEQ worked on possible solutions which were agreed to in January. Bill was amended to satisfy all concerns. NDPMA supported. Bill passed both Chambers, but did not include the any seed money from Legacy Fund earnings.

[SB 2065](#): This is a bill relating to the authority of the board of university and school lands to lease lands under its control for the underground storage of oil or gas and the jurisdiction of the industrial commission to regulate the permitting and amalgamation of the underground storage of oil or gas. In a nutshell, this bill has the potential to allow for the development of some **underground propane storage caverns in western ND**. NDPGA supported. Bill passed both Chambers.

[HB 1159](#): This bill provides for a potential legislative management **study regarding nat gas and propane** infrastructure. This bill initially would have given The ND Industrial Commission 100 MILLION DOLLARS to develop grants for natural gas development in ND. NDPGA opposed and HB 1159 has been reduced to a potential study. Not sure how much more needs to be studied regarding natural gas vs. propane.

[SB 2091](#): This bill is relating to an exclusion from the definition of public utility and rural electric cooperative. In a nutshell, this bill would allow a **retail business to resell electricity to a consumer** at their stores. In other words, if a retailer opts to set up recharging stations for EVS they would be able to charge a fee for the electricity. NDPMA supported. This bill passed both Chambers.

HB 1431 and HB 1380: [HB 1431](#), the bonding bill provides 680 million dollars for ND infrastructure projects in the next biennium. This bill as well as [HB 1380](#), the Legacy Fund streams bill, begin to provide **good long-term solutions for road and infrastructure** maintenance and development at all levels of government. Both rely heavily on Legacy Fund earnings for funding and payback. I believe HB 1380, which takes effect at the beginning of the 2023 biennium, also has a Legacy fund earnings stream in it for individual income tax relief of up to 50 Million dollars.

FOR IMMEDIATE RELEASE

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Retailers Sue Fed Over Failure to Follow Congress' Direction on Debit Card Swipe Fees

WASHINGTON, April 29, 2021 – Retailers filed a lawsuit today seeking to have the Federal Reserve lower its 10-year-old cap on “swipe” fees banks charge to process debit card transactions, saying the agency wrongly applied federal law and that merchants have paid billions of dollars more than intended by Congress while banks’ costs have fallen.

“The Fed allowed fees that were much too high in the first place,” National Retail Federation Chief Administrative Officer and General Counsel Stephanie Martz said. “Since then, banks’ costs have fallen steadily but the Fed has refused to make adjustments, letting the problem grow even worse. Legislation passed by Congress requires that these fees be kept in proportion to costs to protect merchants and their customers, but the Fed has failed to do that. Since the Fed hasn’t acted voluntarily, it’s time for the courts to enforce the law. Retailers are paying twice what they should and these fees ultimately drive up prices paid by the public. Banks should not be handed a growing windfall at the expense of Main Street stores and consumers.”

The suit against the Federal Reserve Board of Governors was filed by the [North Dakota Retail Association](#) and the [North Dakota Petroleum Marketers Association](#) in U.S. District Court in Bismarck. NRF is not a party but Martz is co-counsel in the case.

“North Dakota merchants are willing to pay a reasonable fee for a service, but they’re tired of seeing Wall Street banks stick their hands into the pockets of local businesses,” said Mike Rud, president of the joint associations. “These fees are far higher than they need to be and take too much money out of the local economy.”

The lawsuit claims the cap is higher than allowed under the Durbin Amendment, a law passed by Congress in 2010 to address a “broken market” of soaring swipe fees set by Visa and Mastercard and lack of competition among the card-issuing banks that receive the fees.

The Durbin Amendment directed the Fed to set regulations resulting in debit card swipe fees that were “reasonable” and also “proportional” to banks’ costs. But the suit argues that the Fed exceeded its authority by going beyond costs Congress said could be considered in writing its regulations. It seeks to have the cap recalculated and regularly adjusted if banks’ costs continue to fall in the future.

“These fees are far higher than they need to be and take too much money out of the local economy.”
Mike Rud

“For a decade, the board has failed to properly follow Congress’s instructions,” the lawsuit said. “Because the board has not done what Congress said to cure this market failure, American consumers and merchants continue to suffer the same harms that prompted Congress to act in the first place. Enough is enough.”

The Durbin Amendment limited costs the Fed could consider to *incremental* expenses in authorizing, clearing and settling transactions. The law specifically said other costs “shall not” be considered.

Based on those costs, the Fed initially proposed that the fees be limited to 7-12 cents per transaction. Under pressure from banks, however, officials “flouted Congress’s decision” by going back and taking *fixed* costs into consideration along with fraud losses, transaction monitoring and network processing fees. The final cap, which applies only to financial institutions with \$10 billion or more in assets, was set at 21 cents plus 1 cent for fraud prevention and 0.05 percent for fraud loss recovery.

Banks are free to charge a higher amount provided that they set debit swipe fees themselves rather than following fees set by Visa and Mastercard, but no major banks have done so.

Since 2011, the Fed has reviewed banks' costs every two years as required by Durbin but has failed to adjust its regulations to keep fees proportional as costs have fallen despite repeated concerns voiced by NRF and other retail groups, the suit said.

A survey by the Fed found bank costs allowed under Durbin averaged 8 cents per transaction as of 2009, the year before the law was passed. Based on that, the 21-cent figure gave banks an average profit of 163 percent, according to the suit. But subsequent Fed surveys show the costs had steadily fallen to 3.6 cents as of 2017, increasing the average profit to a "stratospheric" 483 percent that "in other sectors might prompt antitrust or price-gouging investigations." Banks are now charging almost six times their average cost, compared with less than three times when the regulations first took effect.

The amount allowed by the regulations "grows less reasonable and proportional with every passing year" and "issuers have continued to reap tens of billions of dollars in profits from interchange fees even after Congress moved to halt networks' harmful pricing practices," the suit said. The number of purchases paid for with debit cards has nearly doubled since 2009 and has been "turbocharged" by consumers shunning cash during the pandemic, increasing the impact of the fees, the suit said.

Brady Lund, owner of the Corner Post truck stop and convenience store in Watford City, N.D., said in a declaration filed with the suit that "inflated" swipe fees have meant higher prices for customers and lower profits for his business. Lowering the fees would let him charge lower prices and would "increase the Corner Post's ability to continue as a going concern."

Before Durbin, banks charged about 45 cents to process a typical debit transaction, and regulation has [saved merchants \\$9.4 billion a year](#), according to payments consulting firm CMSPI. But with growing usage, processing fees for Visa and Mastercard debit cards totaled \$19.7 billion in 2019, about the same as before Durbin was passed, according to the Nilson Report, a trade publication that follows the card industry.

Debit and credit card fees are among merchants' highest costs after labor and drive up prices paid by consumers by hundreds of dollars a year for the average family. Card processing fees totaled \$116.4 billion in 2019, up 88 percent over the previous decade, according to Nilson.

NRF sued the Fed in federal court shortly after the Fed issued its regulations, saying 21 cents exceeded the "reasonable" level intended by Congress. A trial judge agreed in 2013 but the decision was overturned by an appeals court in 2014. NRF appealed to the U.S. Supreme Court but the justices declined to take up the case.

Events

DOT Hazardous Materials Training
May 21 – August 27 – December 10

**ND Propane Gas Association
Annual Meeting & Convention**
June 23 & 24, 2021
Rough Riders Hotel, Medora

**ND Petroleum Marketers & Retail Associations
PAC Golf Fund Raiser**
August 3, 2021
Hawktree Golf Club – Bismarck

**NDRA / NDPMA
Joint Board Member Meeting**
August 4, 2021
Holiday Inn – Bismarck

**ND Petroleum Marketers Association
Annual Meeting & Convention**
October 19 & 20, 2021
Delta Hotel by Marriott
1635 42nd Street South – Fargo

If you would like to add employees to the email distribution list, please send their email address to mary.ndrpma@midconetwork.com

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