

**2021 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1299**



# 2021 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1299  
1/19/2021

### Prohibiting a retail establishment from refusing to accept cash as payment

(9:06) Chairman Lefor opens the hearing on HB 1299.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	A
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

#### Discussion Topics:

- Cash for essential goods & services access

Rep Ben Koppelman~District 16: Attachment #1509

Travis Zablotney~Minot. Testified in favor.

Ben Koppelman: Answered questions.

Mike Rud~President of ND Petroleum Marketers & Retail Associations. Attachment # 1516.

Arik Spencer~President & CEO of ND Chamber. Testified in opposition.

Carel Two-Eagle~CVO-Indian Maid Products Incorporated. Attachment #1505.

Parrell Grossman~Director of Consumer Protection-Office of Attorney General. Attachment #984.

Chairman Lefor closes the hearing.



Rep D Ruby: Moves to amend as requested by the Attorney General verbally. See attachment #984 above. Amendment #21.0437.01001

Rep Hagert: Second.

Voice vote~motion carried.

Rep D Ruby: Moves a Do Not Pass as Amended.

Rep P Anderson: Second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	A
Rep Scott Louser	N
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	N
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Roll call taken was taken, motion carried 11-2-1 & Rep O'Brien is the carrier.

**Additional written testimony:** Attachments #1287, 1348, 1436, 1444, 1688.

(10:00) End time.

*Ellen LeTang, Committee Clerk*



January 19, 2021

of  
1/19/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1299

Page 1, line 1, replace "51-15" with "51-07"

Page 1, replace lines 5 and 6 with:

**"SECTION 1.** A new section to chapter 51-07 of the North Dakota Century Code  
is created and enacted as follows:"

Page 1, line 23, replace "by" with "in"

Page 1, line 23, remove "it is a deceptive act or practice in"

Page 1, line 24, replace "violation of this chapter for a retail establishment to" with "a retail  
establishment may not"

Page 2, line 22, replace "shall" with "may"

Page 2, line 28, replace "shall" with "may"

Renumber accordingly



**REPORT OF STANDING COMMITTEE**

**HB 1299: Industry, Business and Labor Committee (Rep. Lefor, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1299 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "51-15" with "51-07"

Page 1, replace lines 5 and 6 with:

**"SECTION 1.** A new section to chapter 51-07 of the North Dakota Century Code is created and enacted as follows:"

Page 1, line 23, replace "by" with "in"

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Renumber accordingly



1/19/2021

# 1509

HB 1299

Rep. Ben Koppelman- Testimony

Mr. Chairman and Members of the Committee, thank you for the opportunity to introduce HB 1299. I introduced this bill to ensure that all consumers maintain access to essential goods and services in the marketplace.

As you are aware, our economy has been making a transition away from cash and checks as being the preferred form of payment and toward a world where credit cards and digital wallets are becoming the norm. While there are many advantages and conveniences that go along with these options, potentially eliminating hard currency does have its concerns.

As many of you are aware, I am a pro-business and pro-industry legislator that is typically in favor of reducing regulation and removing government red-tape. However, I believe there is a time when some government regulation makes sense, and that is when its purpose is to protect freedom. Now you might look at this bill and say that it appears to take freedom away from businesses to choose the types of payment that they choose accept, and there is some truth in that. Some may also look at this bill and say it allows businesses to take away individual freedom by allowing businesses to not take cash in so many circumstances, and there is some truth in that also.

The key is that there are two traditional and fundamental conflicting freedoms here: an individual's ability to choose what form of payment to use and a businesses ability to choose what form of payment to accept. Government has had to wrestle with how to balance overlapping or conflicting interests before. A few examples are ADA accessibility, or not refusing service based on race or religion, or businesses having the right to refuse service. In each of these examples, the attempt is to balance fair access to services without being too overbearing on businesses.

As of now, I am not aware of many North Dakota businesses moving completely away from cash, therefore, I believe now is the time to address the issue of cash acceptance. This way, there is no burden placed on businesses to change their practices if this bill passes.

Section 31 of U.S.C. 5103 entitled "Legal Tender" states: "United States coins and currency are legal tender for all debts, public charges, taxes, and dues." However, according to the Federal Reserve Website, there is no federal statute mandating that a private business accept cash, but rather it is up to state law to determine such things, and rightfully so.

According to the FDIC, in 2017 there were 6.5% of households that did not have bank accounts. Among certain racial demographics it is even higher, with 14% of Latino households and 16.9% of African American households not having bank accounts.



Among our senior citizen population, there are many that prefer cash because they trust it much more than plastic. They lived much of their life in an era of using cash, having credit accounts being available at local stores, and writing checks, two of which are all but gone in the consumer spending market.

Our service industries rely on cash as a key component to their existence, and many of those employees rely equally on cash to buy the essentials for their lives.

Those who have bad credit or struggle with money management often use cash to stay out of credit card debt. In fact, many credit counselors recommend the cash-in-envelope approach to learning money management. Also, citizens returning to society from incarceration often use cash as their main form of tender until they reestablish their credit.

Then there is the trust factor for many. Some wonder if we go entirely to a digital currency, will government or private industry such as Google, Amazon, or Facebook be able to track and data-mine all aspects of their lives. As many of you know, data is the marketing currency for businesses in the 21<sup>st</sup> century, and because of its value, there are data breaches that happen all the time. Have any of you ever had your credit card account frozen because of suspected fraud? What if that was your only way to buy gas or groceries? Many are not comfortable with that scenario.

Some have said that consumers should just shop elsewhere if they don't like a business' no-cash policy. For now, this strategy might work in Fargo or Bismarck, but in many small towns, there is only one grocery store, gas station, café, or bar. If those businesses choose not to accept cash, there is not another alternative, especially if the individual does not have reliable transportation to another city.

This is why you have a bill before you that protects consumer access and choice in the marketplace for necessities and in-person transactions while balancing that interest with the 21<sup>st</sup> Century digital marketplace.

According to a survey by Square Inc., 83% of businesses said they would not ever stop accepting cash, and my guess is that most in North Dakota currently accept cash. HB 1299 allows numerous exceptions of when cash is not required to be accepted when not practical for businesses. I don't believe this is a burdensome regulation, but rather a preemptive protection against future limitations on freedom. It has been said that "Cash is King" and "Cash is the Great Equalizer", I hope we all value that concept and ensure that we don't lose our physical currency to the marketplace.

I respectfully request a Do-Pass from the Committee, and would be happy to answer any questions.





ND Petroleum Marketers Association  
ND Retail Association



Testimony- HB 1299

# 1516

January 19, 2021- House IBL

Chairman Lefor and Members of the House IBL Committee:

For the record I'm Mike Rud, President of the North Dakota Petroleum Marketers and Retail Associations. On behalf of well over 1,000 retail store fronts making up our membership, I urge a **"DO NOT PASS" recommendation on HB 1299.**

Our membership cannot see a need whatsoever for a bill of this kind. Government has no place telling a retailer what type of payment it can or can't accept. If ever we saw the potential for an opportunity to get the camel's nose under the tent and let government way too deep into the operations of a personal business, HB 1299 would be it. This is truly a slippery slope. Today what type of payment method a retailer can or can't accept-- Tomorrow, it could be more government influence over what kind of products a retailer can or can't sell.

All this talk has surfaced due to the pandemic and discussions over touchless payment methods. Yes, because of the pandemic, we may have seen a few businesses decide not to take cash in the short term. We also saw a coin shortage due to the pandemic, but the American currency is still flowing through all the retail shops I've frequented or have been discussing business concerns with during this ongoing crisis. It appears only a few ND businesses have gone strictly to credit cards as a payment option. Whether you agree or not, that's still their right.

A national retail survey I saw pointed out despite all the growth in the multiple forms of payment systems, nearly 55% of the consumers polled said cash was still their chosen method of payment.



In a rural state like ND, any retailer not accepting cash is very aware of the fact it might cost them some sales because of the conservative nature of the ND consumer. People will shop elsewhere if their chosen payment method isn't accepted. The North Dakota retailer is well aware of this fact—Cash is still King. I can also tell you many ND businesses would much rather accept cash than continue to pay the 2.5-3.5% transaction fees charged by the credit card companies for every credit card sale run through a retail till.

To date, I can say our association office has not received any complaints from disgruntled customers regarding the payment methods being used by ND retailers. NDPMA/NDRA believe HB 1299 is a solution in search of a problem—government interference in business.

**Again, NDPMA/NDRA asks for a “DO NOT PASS” recommendation on HB 1299.**



<< TESTIMONY ON HB 1299 >>

Carel Two-Eagle, PK, PB,  
CVO, Indian Maid Products Incorporated

Good day, Chairman Lefor and members of the House IB & L Committee. For the record, my name is Carel Two-Eagle. I am the CVO – the Chief Visionary Officer – of Indian Maid Products Incorporated, and I am speaking today in favor of House Bill 1299.

Twenty years ago, I founded Indian Maid Products Incorporated, mainly to support the 501c3 170c2 I also head, since I do not beg well. I have been in business for most of my life. Business is, for the most part, fun. I get paid to play! We (Indian Maid) do at least 95% of our business online, but I like HB 1299, just the same. I believe it is needed, because while federal law says its currency is legal tender and businesses must accept it, there appear to be no teeth in the federal law. That then puts the burden of requirement for a stable currency supply on the states.

Over the years, I have interacted with several businesses that refused to accept cash for a variety of excuses, despite federal law stating they must. Since the covid situation began, I have come in contact with more of them. They want their customers to pay only with credit or debit cards. I find this insulting to the concept of a stable national currency as well as to the individual, as if we all were carriers of the covid virus or other diseases.

Cash transactions are preferable in many situations to debit or credit cards, such as very small dollar amount sales. Cash transactions have the advantage of insuring that our young people actually know how to count and how to make change. Cash is completely insulated from hackers. We know that isn't true for electronic transactions. I'm sure others will bring other considerations before you.

It is my strong hope you will give HB 1299 a unanimous DO Pass recommendation, and that the House and later, the Senate, will concur.

Thank you for hearing me in a good way now. I will be happy to answer any questions you may have.



HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE  
MIKE LEFOR, CHAIRMAN  
JANUARY 19, 2021

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
RE: HOUSE BILL NO. 1299

Mr. Chairman and members of the House Industry, Business and Labor Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of Attorney General Wayne Stenehjem in regard to House Bill No. 1299.

The Attorney General is neutral as to most provisions of this legislation. However, the Attorney General is opposed to that portion of subsection 2, page 1, lines 23-24, which makes this conduct "a deceptive act or practice." This conduct isn't fraudulent or deceptive conduct. The Attorney General requests that this legislation, instead, be placed in chapter 51-07 involving "Miscellaneous Provisions," with the appropriate amendments to references to 51-15 on page 1, lines 1 and 5.

The Attorney General requests that lines 23-24, page 1, be replaced with:

"Except as otherwise provided in this section, a retail establishment may not:

The Attorney General also proposes changes in subsections (4)(a) and (4)(b). We propose changing page 2, line 22, from "shall" investigate to "may" investigate and page 2, line 28, from "shall" issue a cease and desist order to "may" issue a cease and desist order. This will make our enforcement authority consistent with the Attorney General's other authority in enforcement matters.

If you would like the Attorney General to prepare any formal amendments, please just let us know and we would be pleased to promptly do so.

Thank you for your time and consideration. I would be pleased to try to answer any questions.



House Bill No. 1299

Testimony has been submitted by Parrell Grossman and my testimony is in support of and on behalf of Parrell D. Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division.

January 19, 2021

Elin S. Alm

Assistant Attorney General

[ealm@nd.gov](mailto:ealm@nd.gov) 701-328-5570



**HB 1299**

**Prohibiting a retail establishment from refusing to accept cash as payment: In Support**

Dear Members of the House Industry, Business and Labor Committee,

My name is Tara Dukart, and I am a business owner. I live near Hazen, ND, and I support HB 1299. Using and accepting cash as legal tender is a concept I never anticipated would be in jeopardy.

I do not know whether or not future law makers or businesses will attempt to move us into a “cashless society,” but my hope is that this bill would prevent that from becoming a reality.

I believe people have the right to financial freedom, and that includes using physical cash. Many of us participate in Dave Ramsey’s method of paying with cash instead of credit cards. It keeps us accountable and financially responsible by avoiding impulsive purchases or going over our planned budgets.

A cashless society would mean no tooth fairy coins for our kids, no paper bills placed in birthday cards or wedding cards, no easy exchange of cash at local businesses or community events. More concerning to me is the thought of a government or bank having the power to turn on and off digital funds without our consent.

Since not all business currently allow payment in the form of checking account checks, I believe cash should always be a legal option for payment. Therefore, I urge you to support HB 1299 to protect our financial freedom and responsibilities.

Thank you very much for your time and consideration.

Sincerely,

Tara Dukart  
Seek First Ranch & Seek First Holistic Solutions  
Hazen, ND



*Testimony for the*  
**House Industry, Business, and Labor Committee**  
**HB 1299**

Andrew Alexis Varvel

January 19, 2021

Chairman Lefor and Members of the House IBL Committee:

My name is Andrew Alexis Varvel. I live in Bismarck, District 47.

I like this bill. I like this bill a lot. This is a good piece of legislation to defend the right of people to pay their bills with legal tender currency at retail establishments. This is about keeping retail establishments from behaving like a bunch of digital snobs.

Not everybody has a credit card. Not everybody has a PayPal account. Not everybody uses a smart phone to pay bills. Not everybody wants one. Sometimes, using cash is about having no better options. Sometimes, using cash is about convenience. Sometimes, using cash is about not wanting to submit to Chinese-style surveillance. Sometimes, using cash is about the sheer sentimentality of seeing the portraits of Alexander Hamilton, Abraham Lincoln, and George Washington on our currency.

Regardless, paying for groceries and restaurant bills with legal tender currency should be a right, not a privilege. I appreciate how workers at retail outlets wear gloves and use sanitizer to protect themselves – and us – from this pandemic. I also appreciate the dangers of relying extensively on digital currency, as Communist China now does.

Again, this is a good bill. Please vote DO PASS for House Bill 1299.

Thank you.

Andrew Alexis Varvel  
2630 Commons Avenue  
Bismarck, ND 58503  
701-255-6639  
mr.a.alexis.varvel@gmail.com



HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE  
MIKE LEFOR, CHAIRMAN JANUARY 19, 2021

TESTIMONY BY  
ALEXIS WANGLER  
RE: HOUSE BILL NO. 1299

Mr. Chairman and members of the House Industry, Business and Labor Committee, my name is Alexis Wangler. This is my written testimony in regard to House Bill No. 1299.

I am strongly in favor for this bill. As Dave Ramsey would say, "Cash is king." Cash is very convenient. With a quick trip to the store for a couple of small items needed for a meal, cash can easily be given to pay for those couple of items without standing at the counter to swipe a debit card or credit card.

Did you know that paying with cash actually reduces your chances of having your identity stolen? Each swipe of your card or input of your card numbers online increases your chance of having your personal information compromised. In the era of online shopping, this is rather concerning.

Did you also know that it has been proven that people have a physical & emotional attachment to cash? There is no physical or emotional attachment to a debit card or credit card. Because of this physical &/or emotional attachment, he or she will be less likely to spend cash carelessly. Therefore, he or she will be less likely to acquire debt.

Using cash actually saves people money. Not everyone has the ability to charge a debit or credit card. Retail establishments are usually charged a fee to charge debit or credit cards. People are more likely to take a lesser offer for products, goods, or services if cash is used.

I also agree that a retail establishment should be subject to a civil penalty for discriminating against those that want to use cash as tender. If there wasn't a penalty, what would stop the retail establishment from violating this bill?

Thank you for your time and consideration.



# 1688

Regarding: HB 1299 Prohibiting a retail establishment from refusing to accept cash as payment.

Dear Committee Members;

My name is Christine Miller. I reside in Bismarck, ND.

I am in favor of passing HB 1299 because I believe that requiring digital currency in lieu of cash could lead to loss of privacy and freedom.

Sincerely,

Christine Miller