

2011 HOUSE JUDICIARY

HB 1438

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1438  
February 9 & 14, 2011  
14514

☐ Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on HB 1438. (The hearing was held on February 9, 2011 and action was taken on 2/14/2011.)

Rep. Scot Kelsch: Sponsor, support. HB 1438 deals with an issue that was brought to my attention by a constituent. I didn't even know this was a case in ND, but he had said, his personal situation was, that he had an employer that forbid him from taking his firearm to work with him and keeping it locked in his vehicle. The problem with that was he had a considerable commute and after work, he wanted to go to the range or go hunting, and would have to drive home and pick up his weapon, and by that time it would be after hours and too late. This says in accordance with your second amendment rights that you are able to take your firearm with you to work, keep it locked in your vehicle, and your employer is prohibited from keeping you from doing that. I have a brief amendment (see attached 1) because there was some concern, although employers are immune from civil liability within this bill, we wanted to make sure that they are also immune criminal liability if the employee does something illegal, while the employer is abiding by the provisions in this bill. I know there will be others here to testify in support and in opposition, but I just want to remind the committee that you have to weigh opposition points in accordance with what the constitution guarantees in the second amendment, and that is the right to bear firearms.

Rep. Delmore: What if I need to use that vehicle as part of the job that I have. Am I still permitted to keep that locked in my car, even though I need to use the vehicle as part of my work routine.

Rep. Scot Kelsch: This simply applies to your personal vehicle, so if it is your personal vehicle you are allowed to keep that weapon within your vehicle. As long as you are driving, you obviously don't have to keep it locked, but once you park it should be locked.

Rep. Delmore: Even if part of my job is to use that personal vehicle to take children or adults to another place, I would still be allowed to keep the weapon in my car.

Rep. Scot Kelsch: That would be the case. I think if you are transporting a large number of adults or children, that you would probably want a larger vehicle and you would probably not be storing that weapon in your vehicle at that time. One more point, if an employee wants to take their weapon to work and keep it locked and hidden out of sight, they will do it, regardless of the law. This is simply to address those who wanted to come in and change the law and do the right thing, to comply and be legal in doing so.

Ch. DeKrey: Thank you. Further testimony in support.

Dwight Rindahl, Fargo, ND: I am the individual that Rep. Kelsch spoke to about bringing forward this bill. My employer says that I cannot have a weapon in my vehicle at work. I have competed at the Nationals at Camp Perry, OH in high-power rifle shooting. In order to take and feel comfortable shooting at that level I wish to be able to go to the closest range that has this type of firing, which is at Grand Forks, ND. In order to make, I can't make it home, change vehicles and get up there in time for the league to start on Wednesday evenings. I'm just asking that my employer can't use this activity against me to fire me for going and doing this. By passing this law, I would be able to take and do this without fear of losing my job, my co-workers if they have a concealed carry permit would be allowed to bring their firearms in their vehicles, locked and they would be able to take and have that right to use their concealed carry permit on their way to and from work.

Rep. Delmore: What precautions do you take. You come across as a responsible person. What precautions do you take to protect and make sure that someone can't get at that weapon because it's not in your possession and secondly, do you think that all people would be that responsible to make sure that it was locked away where someone couldn't somehow get into your car, be it legally or illegally.

Dwight Rindahl: When I have my firearms in my vehicle, they are locked in the trunk. I have a trigger lock that I can use. If people store them in plain sight, they are in violation of the law anyway. They would have to follow the law.

Rep. Koppelman: You referenced the idea that other people with concealed carry permits could do this, but you don't need a permit to lock a gun in your trunk.

Dwight Rindahl: No, I don't need a permit for the firearm in my vehicle. If a person has a concealed permit, he goes to work, what is that person supposed to do when they arrive at work and the employer says that you can't have it on our property.

Rep. Koppelman: If you don't have a concealed carry permit, but you enjoy hunting on the way home from work, and you have a shotgun in your trunk, this would apply as well.

Dwight Rindahl: Yes.

Chairman DeKrey: Thank you. Further testimony in support.

William Brackin, West Fargo, ND: I'm here to support HB 1438 (see attached 2).

Rep. Delmore: As I look at this, a lot of what you're saying seems to make sense. However, when I go out to the Grand Forks airport and as soon as I cross the line, my vehicle is subject to search and seizure. Why should this be different than what would happen when people are concerned about the safety, especially Homeland Security. Would I be able then to go to the airport and say you can't search my vehicle because I am guaranteed that I can have this on public property.

William Brackin: I believe that's exempted. There is a provision in the bill for Homeland Security, wherever it's not legally possessed. This address that I can park on the street with my vehicle, I can go to the parking lot at Target or West Acres and have this firearm in my vehicle but I can't on company property, on their parking lot, but customers are allowed to bring that onto the parking lot.

Rep. Koppelman: The bill talks about having weapons in your vehicle. You brought up the issue of customers. Is there anything in the bill that would protect customers or prohibit an establishment from saying you can't come to our business as a customer and have a shotgun in your trunk.

William Brackin: I can't believe that they would turn away business, in our particular instance if you need to ship your shotgun back to be fixed, you ship it with UPS.

Chairman DeKrey: Thank you. Further testimony in support.

Darrin Goens, Liaison with the NRA: I am here to support HB 1438, which we call the worker protection act. This is legislation that we've sponsored in several other states. Actually, it's grown in significance in the last few years. We're always tabulating what the most recent number of state count is that have passed with. I think it's somewhere around 15 states. It's a relatively new issue, this legislation has come forward in several states just in the last few years. The actual issue began I believe in 2002, with a paper company in Oklahoma that had fired several of their employees under the guise of a drug search and then they found firearms and fired them. The Oklahoma Legislature in turn, passed this bill. There were subsequent court challenges, which all came down on our side. I think as the discussion moves forward, I've dealt with this in several other of my states and so I know sort of what my opposition says. You're going to hear from businesses that are going to come and say this is some sort of a violation of their private property rights. Before we get into that discussion, I would like to remind you that each of us, as a citizen, has constitutional rights. Those constitutional rights are so important that they were put in our Bill of Rights. In fact, this amendment, was the second one to our U.S. constitution. We also need to remember that we are talking about inside the parking lot, not inside the businesses. You can't carry your gun inside the Wal-Mart. We're

only talking about the parking lot, and it has to be locked. In most cases, people put them in their trunks. I think that Rep. Delmore had asked about the precautions that people may take. I would submit that people are actually going to be very safe, for one key reason. That is if I leave my stuff lying on the front seat, visible and unsecured, people are going to steal it. People have a self-interest in tucking their goods away so that it's not stolen. As I mentioned earlier, this was challenged in court on the grounds that it was a taking of private property. The 10<sup>th</sup> Circuit Court of Appeals actually upheld that and said that there was no taking of private property rights. I think the thing that rings home to me is what private property interest does a business have in micromanaging the contents of someone's trunk. If you had a Bible in there, whatever you have in the trunk. You go to a place of business, whether you're an employee or an invitee, how are you diminishing that businesses rights by micromanaging the contents of that trunk. I just don't see it. It was good to get some of the personal testimony from the people that this actually affects. As this issue is moved forward, and we print articles in our National magazine about this, in my states, I've gotten several phone calls from people who have been fired. The thing that I found interesting, particularly in the state of Michigan, where unemployment was almost 15% at one point, I think it's still hovering around 14%, is that the people who complied with it, they had concealed carry permits and the guy said, listen it becomes an issue for me of do I exercise my constitutional right to carry or do I feed my family, because I can't risk my job. It's not necessarily all the time, it's not necessarily the people who are fired, but the people who's rights and way of life is restricted. The hunter, the competitive shooters, who have to change their life simply out of the fear of being fired. As Rep. Kelsch had mentioned earlier, especially in a state like ND, where so many people hunt, particularly before and after work, or the people who conceal carry, they're going to have the stuff in the trunk and the business, are they going to go out and search everybody's vehicles, and particularly differentiating the vehicles between the employees and the people who are invited there. It seems to me in terms of the private property right issue, I think, falls squarely in our favor in terms of this isn't a huge obligation for employers. We're talking about the parking lots, we're talking about them being locked. It's also to make a distinction between a business, someone who invites the public to come there, versus you as a personal home owner. Clearly, this is talking about private employers and they property rights. Because businesses subject themselves to all sorts of government intrusion. OSHA laws, child labor laws, you can't just run your shop as you see fit. There is still some government regulation. The courts have also looked at that and said that those OSHA standards, you create a different expectation when you are open for business. In the final analysis, I think this is an important and reasonable legislation, because we've had two national Supreme Court decisions on a person's right to protect themselves and upheld the second amendment. This is simply saying that employers can't arbitrarily and capriciously fire people for exercising a constitutional right.

Rep. Delmore: How many states now have model legislation like this, where they allow it.

Darrin Goens: Unfortunately I wasn't overly prepared for this bill today, because I was coming here to speak on bill #3. I can give you a ballpark figure, but I can certainly get that information to you, because I have it. I believe it was about 15 states. Of course, as we are getting into a new year, several other legislatures are taking up this issue as we speak. So that number is growing all the time. Really, this is encouraging that there are that many states because these bills really only started coming forward in the last two or three years. It's much like castle doctrine and now we're up to more than 20 states.

Rep. Delmore: Can you tell me how you reached the decisions on what was property where that couldn't be done and all other property where you think it should be legal to do this. As I understand it, if I have a weapon in my vehicle, it must be locked or it can be confiscated, am I correct.

Darrin Goens: There are two questions there. The first question being the places that they're allowed. Really, it is a sort of meshing of several different things. You brought up airports which is a different deal. Prisons was included in there, there are several places where we talked about churches here. You're really looking at places that are already restricted under normal carry laws in the state, so it wouldn't make sense to have them conflicting. Schools were mentioned in there, and I also believe daycare facilities were as well. Because of the carry laws are intertwined in this, it wouldn't make sense to conflict. So there was a reasoning why those places were chosen.

Rep. Delmore: I'm just saying, if I leave a weapon in my vehicle, and it doesn't necessarily have to be seen, maybe it's underneath something, somebody comes across it, I can lose that weapon now, somebody can say they are taking this away from you because it should have been locked somewhere in your vehicle, not just laying in there because I could bring it to work.

Darrin Goens: I think you are talking about could you lose your weapon to law enforcement for improper storing that. I don't know in ND if you can, I think in a good many states, no. You could leave that gun sitting out and especially in the open carry states and there is nothing they can do. It would be rather silly because you're inviting someone to steal your property. I'm not absolutely under current ND law if they can say you're improperly storing it and confiscate it.

Rep. Delmore: I'd appreciate that information because I think there is a great deal of difference and where I park my car with a weapon in it that's locked inside there, which someone would probably illegally get in to, or I just leave it in my vehicle and think I have the right to do that, when there is no protection from someone else getting in and using that weapon, in a way that I never intended for it to be used.

Rep. Klemin: I think I heard you say that churches are included in the list of prohibitions that it doesn't apply to. I don't see that in the list in this bill. Should it be there.

Darrin Goens: Yes, I don't have the bill in front of me and if churches aren't there, it seems to me that might be something that needs to be discussed. We'll want them to match the carry provisions.

Rep. Koppelman: One of the areas in the bill is schools. This is an issue that we've discussed over the years. ND is a state where a lot of us remember going to school and half of the student population had shotguns or rifles on the rack in the back of the back of the pickup in plain sight and it was the norm. Today, a lot of schools have no tolerance policies for firearms, and so on. This bill doesn't do anything to deal with that one way or the other, the way it's written, is that correct.

Darrin Goens: Yes, that's correct with respect to schools. There would be no substantive change that this bill would bring out.

Chairman DeKrey: Thank you. Further testimony in support of HB 1438.

Richard Anderson, CCW Academy, Firearms Instructor: Support. The safest place for that firearm is actually on your person under your control. NV has laws allowing you to conceal carry in schools and courthouse. Unless they have a sign saying guns are prohibited, they can be taken everywhere. It would be advantageous for employers that don't want you to have a weapon at work, or kept hidden in the car (which can be stolen), to provide a locked box inside the employer's property.

Rep. Delmore: It says firearms, it doesn't say pistol or size, so I have 10 rifles in my locked trunk, your saying an employer would furnish someplace for me to bring it inside the building and lock them up in there.

Richard Anderson: I don't think the majority of people would make it a big issue. There's also gun safes available and they could have an employee assigned as a person to take the firearm and put it in a gun safe if the employee wanted to do that. However, I think we're talking mostly the distinction between long guns and handguns. The conceal handgun is a smaller firearm, that can also be locked in the trunk but also criminals, more so, like to get their hands on handguns, than rifles. Hunting rifles would not be the choice of someone with criminal intent to try and steal a gun to go out and commit a crime with. I think the majority of the security issues probably lie with handguns. Most of the rifles, if they are locked in the trunk, no one would really know it. The concealed handgun licensee, on the other hand, as he or she is travelling to work, has their concealed firearm present and in their possession under their control for their own self-protection. As they get out of their vehicle to go in and work, then they could actually be visibly observed, opening up their trunk, putting the gun in the trunk. For some criminal doing illegal surveillance or stalking looking for a target, that's what they would be looking for. Because the hunting rifles would already be in the trunk under most circumstances. The conceal carry licensee is one that I'm concerned about, providing the lock box so we have a secure place for the handguns.

Rep. Delmore: As I read this bill, it doesn't necessarily say locked in my trunk.

Richard Anderson: It doesn't say it. Most of this revolves around the common sense of the people. There is a small number out there that don't have a lot.

Rep. Delmore: I have a feeling that some of these businesses put some of these things in company policy because on a national level we've seen some of these people you're talking about, bring those weapons in and kill other people with them.

Richard Anderson: On the national level, it's not the legal gun owners doing that. It's the people that have been committed to a mental facility that can't own a gun; not concealed carry licensees that have been through a background check; not law abiding citizens. We're talking about the difference between the legal law abiding citizen, and those bent on doing some type of destruction towards others, such as active shooter incidents. We hear about them all the time. But the active shooters we hear about, the majority of those, have guns illegally. By the way, the FBI can't even profile these people. They range from 12 years old to their 50-60 years old. That's a whole different subject. But they are not our law abiding citizens with common sense.

Chairman DeKrey: Thank you. Further testimony in support.

Jarod Tufte, Attorney: I support the bill for most of the reasons already stated. I did want to answer Rep. Klemin's question about searches. If you look at paragraph 6f, you will see that this doesn't exempt property owned or leased by public or private employer upon which possession of a firearm is prohibited under state or federal law. I believe that would cover churches, which are prohibited under state law, post offices, and places like that, where under state or federal law you may not possess a firearm at that location. I believe that issue is covered.

Rep. Klemin: Are we talking about church parking lots that a firearm would not be allowed locked in the vehicle in the church parking lot.

Jarod Tufte: As I read the bill, and certainly anyone can correct me if I'm wrong, but just the way it exempts national defense locations, aerospace, other places, it's similarly appears to me to exempt places where possession of firearms is prohibited. That's how I read it that may not have been the intent.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition to HB 1438.

Bill Shalhoob, ND Chamber of Commerce: Opposed (see attached 3). If you look on page 2, line 3 and 4, this is much more than an employer/employee bill. The prohibition or attempt to prohibit any customer, employee, or invitee. So when we talk about an employee bill. Please understand that this is much more than an



employee bill. It basically is a prohibition for a business to do anything. We are standing in opposition and urge a do not pass.

Rep. Delmore: Are you aware of any businesses in ND that have fired people for having weapons in their cars.

Bill Shalhoob: I am not. Perhaps Commissioner Weiler would be aware of those things that are brought up. I would hope that any policy given by a business is even-handed. If they're going to say that they prohibit firearms in our parking lot; we're going to prohibit firearms on our property that would apply to everybody there. You'd have a reason for having that policy.

Rep. Koppelman: I empathize with what you're driving at, I'm a believer in personal property rights too, but I'm a believer in the US Constitution and it gets to be a difficult mix here. I assume that a business that is open to the public and you're inviting the public onto your premises, unless somebody is coming after hours or in an inappropriate manner, it almost means that there is no such thing as trespassing because people are coming all the time to buy whatever you sell. Don't you think that the bill tries to strike that responsible balancing act by talking about vehicles vs. being allowed in their building. There doesn't seem to be anything in the bill that would prohibit that sort of thing. Is that not a fair balance.

Bill Shalhoob: I believe that most businesses have already struck that balance in terms of the invitees and employees and the public they want there by not having a prohibition on their place or parking lot that says no guns in your vehicle. On the other hand, if I have a business that wants to do that, for whatever policy reason, a sound or unsound policy reason, I should be able to do that. But most businesses are not going to do this because they understand invitees, particularly customers, may have a firearm in their car, so we're not going to prohibit that. They are going to be reasonable about it. On the other hand, if an employer and/or a property owner out in the country, and I put up a No Hunting sign, no trespassing sign, why shouldn't I be allowed to do that. Is that unreasonable because I say I don't want any invitees, I don't want any of the public on my property under any condition. I may not like it, but I have to understand and respect that property owner's right to do that and I would respect a business owner's right to install this prohibition, he's obviously going to make a business decision that says it is in my best business to have this prohibition and suffer the consequences if people don't wish to enter my parking lot or my place of business, to do business because of it.

Rep. Koppelman: I think there is a difference when a private property owner, who does not hold that property out to be a public place says you're not going to hunt on my land vs. a store saying you're not going to be doing this in our parking lot. Again, I'm sympathetic to what your position is, I'm just trying to figure out if this is a reasonable balance. The bill does not go as far as Mr. Anderson suggested, for example, having the employees have guns and the employer providing a gun lock box. On the other hand, we're dealing with the constitution here, and it seems to me

if we had a bill that questioned whether you could exercise free speech in your vehicle in a parking lot at Wal-Mart, or whether you could read the Bible or worship, or have the freedom to assemble as you chose, we wouldn't even be questioning any of those things and yet when it comes to this issue, there's a lot of debate. I'm thinking that it's maybe a reasonable balance and I understand your position but I don't know.

Bill Shalhoob: We're going to disagree on that, I think we've been fairly consistent in terms of ownership rights as we've discussed going back to smoking issues and a lot of other things. This is not a new position in terms of the business community or the Chamber.

Rep. Klemin: I'm wondering if you could give us some examples of private businesses that have policies prohibiting customers from having a firearm locked in their vehicle while parked in the parking lot, or is this just a matter of principle with the business community.

Bill Shalhoob: I think it is a matter of principle. We don't have any specific examples. We think most businesses are reasonable and we believe most businesses would be reasonable in terms of their employees too.

Rep. Steiner: In a case when you have a hunting season, and you have a lot of hunters coming onto motel parking lots and either their guns are locked or their guns are with them. I'm not sure if the guns are in the room or not, but what if you had a case where you had a motel owner that didn't allow the employees to bring their firearms and have them locked in their car, but then you have a parking lot full of guns from the hunters. Is there a double standard there.

Bill Shalhoob: I don't think so. The only standard there is that you are letting the property owner decide what their policy is. The reason you don't see any signs like that in a motel/hotel parking lot, is because it would be foolish to do so. You'd not be doing any business during that time. I wonder if this isn't a solution in search of a problem.

Chairman DeKrey: Thank you. Further testimony in opposition.

John Olson, ND Peace Officers Association, NSF Railroad, MDU and Otter Tail Power Company: Opposed, when I first looked at this bill, I sent it around to my clients and wanted some response from them. I got some response. I think Mr. Shalhoob expressed the employers'/businesses interest in this bill. Who is best suited to determine the safety and security of their property. I think that this bill goes a lot further than you intend. I think it's a broad brush for some concerns that may have some merit, I don't deny that. The ND Peace Officers Association is composed of a lot of gun owners, NRA members and they are concerned about this bill. They are concerned that when they are called to businesses that have such policy, if an employee or customer or invitee brings a gun and the purpose of bringing a gun is

simply for intimidation or something like that, there is a concern there. So the police officer shows up and handles it. I don't necessarily think there is an arrest made or anything like that, but there is respect for businesses for whatever reason to make those judgments themselves. It is common sense. Is there a real serious problem out there that we have to arm ourselves with the broad language of this bill to address. I don't think there is. There are some secured facilities and utilities that they have some policies that prohibit people from bringing guns onto the premises including parking lots. They probably meet some of these exceptions but I think that they should not be placed in the position of being overridden by state law when they've determined for themselves that there are some security concerns. The railroad is another issue. Rep. Klemin probably brought up this provision and Mr. Tufte alluded to it as well, is the exception on (c) on page 3 that says that this will not apply to property owned or leased by public or private employer or the landlord of a public or private employer upon which is conducted substantial activities involving national defense, aerospace or Homeland Security. First of all, the railroad does have a policy which exists not only in ND but nationwide, in whatever states it operates in. Their policy is essentially, this was out of their recent newsletter, as a reminder, BSNF employee safety rules prohibit employees from possessing firearms while they are on duty or on railroad property. Guns should not be stored in vehicles that are parked on BSNF property. While on duty or on railroad property, employees must not have firearms or other deadly weapons including knives, with blades longer than 3", etc. they may possess these weapons only if they are authorized to use them to perform their duties or if they are given special permission by the designated manager. They want to draw your attention to the Code of Federal Regulations, 49 CFR chapter 12, starting with section 15-80, subsection 105. These are the federal laws and regulations that are in effect for railroads and reporting significant security concerns. The railroad carriers have various duties to report. Included in those duties to report, are threats or significant security concerns that they uncover. They also are required to report discovery of a firearm or other deadly weapon on a train, in a station, terminal facility or storage yard or other location used in the operation of the railroad, etc. Their concern is that if their policy does not hold, an employee brings a firearm inside a vehicle; they are going to have a trigger to report that to Homeland Security, pure and simple. I think if you look at the exception (c) that doesn't work. I think that relates to substantial activities related to national defense or Homeland security. There is a problem there just for the railroad. The other thing that I would look at, would be the exceptions that are listed there, maybe you can provide further exceptions, further fixes, but you are going to forget one and that's going to cause some concern. Churches are already one that was omitted in the bill. Who is to determine that? I think you are running some risk here in thinking that you are going all of these problems with a broad brush of this legislation.

Rep. Koppelman: According to Mr. Goens, this is not this bill's first rodeo. Fifteen other states have adopted it, he thought. Other states are considering it, how has the railroad dealt with that in other states, how have they dealt with it, are they exempted because it is public transit of any sort, whether it's people or goods, is on the radar of Homeland Security and does maybe involve substantial activity.

John Olson: Maybe you and I would be well advised to look at that legislation in other states, for one thing and compare it and see what they've adopted. I am not aware of any other disputes or appearances by the railroad in other states. I am only aware of what we have in front of us. I can certainly find that out for you and see if there have been other skirmishes that the railroad has had to deal with.

Rep. Koppelman: Regarding the concerns of the peace officers, another group that I normally find myself in harmony with, but what is their concern. I don't know if I understood when you were describing their concern, because what is the difference if someone has a gun locked in the trunk of their car and driving down the street, a public street, or parked in their own driveway vs. a parking lot of a business or vs. one business that allows it and another that disallows it. I do not understand the distinction.

John Olson: I'm not suggesting that peace officers have had a lot of concern about this in the past. I think things have operated pretty well. We are trying to fix a problem that doesn't exist. We've gotten along really well. I think peace officers are concerned that allowing those businesses where they determine that there are security issues, the freedom to provide for their safety and security themselves; that a state law should not come in and trump that. There may be instances where law enforcement wants to afford that right of security to those businesses. That harmonizes with certainly the functions of peace officers to make sure that things are peaceful.

Chairman DeKrey: Thank you. Further testimony in opposition.

Mike Ruud, ND Petroleum Marketers and and ND Retail Association: Opposed, I would just echo the comments of Mr. Shalhoob. We have not seen this as an issue. In our industry I think our guys do a pretty good job of making sure that they are dealing with this on their own if there is problem. I just don't see the need for this to become something the state has to put into law. I think our guys can manage this issue by themselves as they have in the past.

Rep. Koppelman: We heard testimony from citizens who have said that this has affected me personally, in my work place, I have been threatened with dismissal from my job if I have a weapon locked in my trunk, in a parking lot during the hours I work, no threat to anybody, no danger to the people at the work place. How do you respond to that, it is a real circumstance?

Mike Ruud: All I can say to that is essentially that those are probably private businesses that have made that decision on their own property. I think our members are making those same kinds of decisions on their own property. Those of us in the retail industry certainly don't want to discourage customers from coming onto the property. We have to make decisions based on sound judgment in terms of what's going to be the best return for our operations.

Rep. Koppelman: I respect that, and I respect private property rights, support business and the freedom to do business. Do you really think a business, by virtue of being a business and owning property, has the right to violate someone else's constitutional rights, if that's what we we're talking about here.

Mike Ruud: I think I would go back to what Mr. Olson said. I don't think it's a problem right now, and as Mr. Shalhoob alluded to, we might have a solution in search of a problem, and that's not good.

Rep. Klemin: This bill applies to three categories, customers, employees, or other invitees, which I guess could be salesmen. Do you see any distinction between the category here, say not prohibiting a customer, but prohibiting an employee from doing that? Do you see a reason for the distinction as to why maybe customers could be allowed to have a firearm locked in their vehicle in the parking lot, whereas an employee might not have that same privilege?

Mike Ruud: I don't see a need for that distinction. Again, I think people just have to be responsible for their actions in terms of what they're doing. I think our employers give our employees that opportunity to be responsible. Again, I don't see this as a major issue at any of our retail outlets, nor have I heard anything from any of our retail outlets regarding this issue.

Rep. Klemin: Well do any of your retail outlets have these kinds of prohibitions.

Mike Ruud: To my knowledge, no.

Chairman DeKrey: Thank you. Further testimony in opposition to HB 1438.

Tyler Rup, ND Petroleum Council: We represent well over 250 oil companies and gas companies in western ND. I just wanted you to be aware that this has an impact on our industry. The man camps that are going up in western ND right now are also affected by this legislation. Currently the policy is no drugs, no alcohol, and no guns on the premises of some of these man camps as set up by the operators in hopes to keep a sterile environment out there. The passage of this legislation would take away their ability to do so for their safety. Just trying to reason through some of this and maybe a partial answer to Rep. Koppelman's questions earlier, in regard to the 2<sup>nd</sup> amendment and person's right to bear and own firearms. Really in section 6, state and federal entities are already saying you have the right to bear arms, but we don't want it on our property; whether that's schools, Dept. of Defense, etc. We're saying the same thing as business owners. We're saying that you can have your weapons, we don't care about that; just don't bring it on to our property.

Rep. Koppelman: The man camps are places where people reside, is that correct.

Tyler Rupp: Yes, that's correct.

Rep. Koppelman: Are you aware of anything else in law that would prohibit a landlord or someone else from disallowing someone to own a gun or keep a gun in their own home, whether renting, etc.

Tyler Rupp: I don't want to incorrectly answer that question. As part of the businesses private place, it would be very similar to that of a hotel or something similar to that. They're not disallowed from owning a firearm; quite simply they are just saying don't bring it on to our property, and at man camps, they are part of that.

Chairman DeKrey: Thank you. Further testimony in opposition.

Cathy Aas, Excel Energy: We are opposed to HB 1438. We do have a company policy that our employees , or no one is allowed on the premises to bear firearms and we just feel that it is private property rights should be preserved.

Chairman DeKrey: Thank you. Further testimony in opposition.

Christopher Dodson, Director, ND Catholic Conference: Opposed, our concerns really falls into two parts; first the concern for religious bodies, religious employers and second, as providers of social services. It's our position that religious rights are fundamental and that includes the right to determine what can be on their own property for a church or any religious body. Churches are not clearly exempt in this particular bill. Churches are in the state law, with regards to carrying, but that is rather limited, it simply says churches. It doesn't apply to monasteries, abbeys, and other church property. I don't think it would cover parking lots because if you look at the phrase, it has to do with places of public gathering. The parking lot isn't necessarily a church gathering unless you having the worship space out there. But it's our position that any religious body has the right to prevent or determine what can be on their property; whether it's alcohol, tobacco, we would not deny the right of 7<sup>th</sup> Day Adventists, to say no tobacco on their parking lots. That's their religious liberty. I'll put in a plug, I wouldn't have to ask for an exemption if we had a religious liberty amendment in the state constitution and someday we will. The second concern concerns those that provide public social service. I think of our hospitals, nursing homes, Home on the Range, the medical clinic, psychiatric clinics, Catholic charities, Lutheran Social Services; people, who provide services to the public, know best what is in the safety interests of that particular institution for the people that they serve and their employees. I particularly think, for example, I live in Jamestown; I go to the State Hospital. Hospitals are not exempt here. But I think Alex Schweitzer's prerogative to determine what is the best way to protect the patients at the state hospital and I think that would apply to any hospitals. As an entity that has hospitals, nursing homes and social services, that is an important concern to us that we still have that right. Lastly, I think we ought to dispel the notion that there are constitutional issues here. The 2<sup>nd</sup> amendment applies to limit the government. We are talking about what is the best policy here among private individuals.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing.

**That concluded the hearing held on 2/9/2011. Action on the bill was taken 2/14/11.**

Chairman DeKrey: We will take a look at HB 1438. What are the committee's wishes in regard to HB 1438.

Rep. Koppelman: I move the Kelsch amendment.

Rep. Beadle: Second the motion.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Koppelman: I move a Do Pass as amended.

Rep. Guggisberg: Second the motion.

Rep. Klemin: Well I'm going to vote no on the Do Pass motion. We had an awful amount of testimony on this and there were a variety of employer groups that came in and appeared in opposition to this bill. The way it is drafted, it would encompass quite a few employers like the railroads, utilities and public transit, and then secondly there was a long discussion about employer property rights and that sort of thing vs. what seemed to be a convenience matter for two people who have been affected by this in the past with employer policies. I think the overwhelming testimony on this to me at least, was that this bill if passed, would create a lot of problems for a lot of employers; some of which are unintended to be that way, I don't support the motion.

Rep. Koppelman: This is not an easy bill. We are in the position of having to balance two very important rights, the constitutional right to keep and bear arms on one hand and private property rights on the other hand; both of which I strongly support. The question in HB 1438 is whether an employer ought to be able to prohibit an employee or a customer or someone visiting their establishment, not from carrying a gun into that establishment; that's not the issue. Not from having a concealed weapon, that's not the issue. But whether they can keep a weapon locked in their car; their car is their property, the vehicle is their property. In trying to balance those two rights, frankly I think HB 1438 does a pretty good job of that. Contrary to what has been implied, I think we're not dealing with a lot of people coming in here opposing the bill because they've had circumstances where this kind of matter is a problem. It's true we had two individuals come in supporting the bill because they have had a problem. The only time this issue has actually been a problem, it's been people that were denied this right. I haven't heard anybody who came in and saying, we've had people locking their shotgun or target pistol in the trunk and that's really a problem for our business because... and explained the issue

where it's been a problem. If you're going to balance those rights, I think it's perfectly reasonable to say that as long as a person keeps a weapon locked in their vehicle, and their right to bear arms is secured in that way, and we're not talking about private property in the sense of your home, your yard or driveway. We're talking about public places, we're talking about public places; places of business. So what would you do if you were coming back from a hunting trip and wanted to stop at Wal-Mart to pick something up and Wal-Mart said you couldn't have a gun in your trunk. Where do you put the gun before you go to Wal-Mart to buy a hunting vest, or whatever it is that you're going to buy at Wal-Mart. I think it's perfectly reasonable to say that's the distinction. Keep it locked in your vehicle, you're allowed to do it. If a business wants to have any other restriction, say you can't carry it in with you or we don't allow guns in our establishment, they have every right to do that. This bill wouldn't change that. I hope that we would pass the bill.

Rep. Hogan: In looking at my notes on the testimony on this, there was a request from ND Catholic Conference, that we add a section under (c) on page 2 regarding churches and the question is, would churches have to be allowed. I think that's something that the committee may want to look at.

Rep. Klemin: It's broader than that. It goes to such places as monasteries, nursing homes, hospitals, anything operated by churches and I think it was brought out that state law mentions churches, but not parking lots where these other religious organizations or entities, so the kind of thing you are talking about, I think is a lot broader than just saying churches.

Rep. Hogan: But I think it is something that this committee should think about as one of the possible exemptions.

Rep. Klemin: We also had testimony that the utility companies currently have policies against it, like the person from Excel Energy. That would be nullified by this bill. There was testimony from the ND Petroleum Council on the man camps out in the oil country. That would be nullified by this bill. We had testimony from John Olson who talked about the railroads. I think these businesses should be able to decide that by themselves. If you can't get your hunting vest at a store that doesn't permit you to bring a gun onto the parking lot, there are plenty of other stores that sell it. I think we all have to recognize that cars get broken into, things get taken out.

Rep. Delmore: I'm just not sure that there is a laundry list long enough. There are some broad exemptions in here and I agree with Rep. Koppelman. I get in trouble with the NRA all the time. But I do believe that we have that right. The other problem that is bothering me, that was brought out by a couple of entities, is they have a responsibility to report suspicious activity to Homeland Security, because they feel like they have a liability issue with that. That would put them in a really difficult spot.



Rep. Koppelman: Just one other comment. We did hear testimony that two court cases, already support what this bill seeks to do. I haven't reviewed those cases, I don't know where they were or what the specifics of the cases were, but I suspect that it would take a court case and a lot of money to defend and deal with it. I suspect that some of these policies we're hearing about, might not hold up under a court's careful examination of the second amendment. So I think this bill simply seeks to strike a reasonable compromise and balance.

Rep. Onstad: I know I'm actually on this bill, but as I heard testimony, the man camps and the requirement of no alcohol, no firearms on their property is really crucial. Law enforcement shudders in our area when they see 400 men living in dormitories coming together and that sort of thing. I just feel that I have to oppose the bill the way it is. I think there is probably a better way to handle it.

Rep. Beadle: I fully support the NRA and the idea about the right to bear arms. Where I struggle with this bill, is when in conflict between the constitutional right to bear arms and the rights those individuals have for their property. I believe that this bill overreaches the constitutional right to bear arms. It's asking us to allow somebody have their gun in their possession, whether it's in their car or whatever and allow them or give them permission to bring it onto somebody else's property when that person directly states, I do not want you to have that on my property. Because of that is why I will resist the do pass motion.

Rep. Koppelman: We're not dealing with individuals here. We're not dealing with every piece of private property, we're dealing with employers and public places.

Chairman DeKrey: Clerk will call the roll on a Do Pass as amended motion on HB 1438.

**3 YES 11 NO 0 ABSENT DO PASS AS AMENDED MOTION FAILS.**

Rep. Beadle: I move a Do Not Pass as amended motion.

Rep. Klemin: Second the motion.

Rep. Koppelman: Just a comment, I hope two of the co-sponsors appreciate how hard I am working for their bill that they are about to kill.

Chairman DeKrey: The clerk will call the roll on a Do Not Pass as amended motion.

**11 YES 3 NO 0 ABSENT**

**DO NOT PASS AS AMENDED MOTION CARRIED.**

**CARRIER: Ch. DeKrey**

Date: 2/14/11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1438

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Guggisberg

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey		✓	Rep. Delmore		✓
Rep. Klemin		✓	Rep. Guggisberg	✓	
Rep. Beadle		✓	Rep. Hogan		✓
Rep. Boehning		✓	Rep. Onstad		✓
Rep. Brabandt		✓			
Rep. Kingsbury		✓			
Rep. Koppelman	✓				
Rep. Kretschmar		✓			
Rep. Maragos	✓				
Rep. Steiner		✓			

Total (Yes) 3 No 11

Absent 0

Floor Assignment \_\_\_\_\_

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

*Motion failed.*

11.0586.02001  
Title.03000

Prepared by the Legislative Council staff for  
Representative S. Kelsh  
February 8, 2011

VK  
2/14/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1438

Page 2, line 15, after "a" insert "criminal or"

Renumber accordingly

Date: 2/14/11  
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1438

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0586.02001 03000

Action Taken: ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Beadle Seconded By Rep. Klemm

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemm	✓		Rep. Guggisberg		✓
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman		✓			
Rep. Kretschmar	✓				
Rep. Maragos		✓			
Rep. Steiner	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. DeKrey

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

**REPORT OF STANDING COMMITTEE**

**HB 1438: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1438 was placed on the Sixth order on the calendar.

Page 2, line 15, after "a" insert "criminal or"

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1438

# 2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1438  
March 22, 2011  
Job Number 15809

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to an employers' prohibition on firearm possession

### Minutes:

Testimony and Amendments Attached

**Chairman Klein:** Opened the hearing on House Bill 1438.

**Representative Kelsh:** He introduced the bill and said it was brought to his attention by constituents. He talked about an incident a constituent had concerning bringing a firearm to work and leaving it in his locked vehicle. He said what the bill does is it keeps employers' from taking away our second amendment rights. He said a personal vehicle is your personal property. The House made one change to the bill, page two, line fifteen and added criminal immunity to the employer in addition to civil action immunity.

**Chairman Klein:** Asked if this had been litigated to any other state, as an employee who felt his right was being infringed upon, has it been taken to any court around the country.

**Representative Kelsh:** Said his understanding is yes, it has been litigated in court in thirteen states and every case the second amendment side has prevailed.

**Chairman Klein:** Said that this bill would more clearly provide the employers' with some clear guidelines as to what may be legal and what may not be legal?

**Representative Kelsh:** Said exactly. He said he introduced this bill for the people who really want to do the right thing. They could violate the company's rule and the company may or may not know about it and they could have firearms stored in the trunk of their car. He said rather than do that these constituents asked me and this legislature to change the law so they are in compliance because they want to do the right thing.

**Senator Andrist:** Said what he is wrestling with, is most of the incidences of work place violence resulted when a disgruntled employee snaps and goes out to the car and gets the gun and comes back in and starts shooting. He asked if he thought through this.

**Representative Kelsh:** Said that this bill really doesn't do anything to change that prohibition because once you take the weapon out and start firing you are in violation of the

law. If you are going to break the law and take action because you're a disgruntled employee you will do it regardless of what the law is.

**Chairman Klein:** Said that you are suggesting if they are going to come in and start shooting it would have happened anyway.

**Darin Goens, National Rifle Association:** Testimony Attached (1).

**Senator Nodland:** Asked of the thirteen states that have adopted this, have any of them had any court cases?

**Darin:** Said that Oklahoma is one of the states. In Florida the Northern District Court refused to put an injunction on the Florida Law. There was an AG's opinion in Louisiana that dealt with OSHA's standards; it dealt with Maritime law and the homeland security issues.

**Chairman Klein:** Asked for him to go over the places that would be exempt from this law.

**Darin:** He went over that section of the law.

**Senator Laffen:** Asked if there is a law in Minnesota that says they can carry a concealed weapon into a business unless it is posted, does this effect North Dakota either way.

**Darin:** In 2005 Minnesota it was written in the law that they have the parking lot protection and they also have a posting requirement that is in statute. The only thing it does is wipe it out.

**Chairman Klein:** Asked if this was model legislation from other states.

**Darin:** Said they start out with a concept that has to be tailored to the individual state's statute and there were some things that were tweaked in here.

**Bill Shalhoob, ND Chamber of Commerce:** He is here in opposition to the bill. He is here to introduce the opposition and they will be introducing some amendments to the bill.

**John M. Olson, BNSF, MDO, OTPC, X CEL, ND POA:** He offered a proposed amendment (2) and a handout on the federal regulations (3). He said he hopes he will show that they are not opposed to the NRA's principals and they are not opposed to the constitution rights given to us in the second amendment. He then goes over the amendment. He doesn't want to make this a fight between property rights and the second amendment. This bill does honor some concerns that people have for schools and other kinds of entities, so we already mapped out some exceptions to the rule to what this bill is offering. They have some additional concerns that businesses and industry have in North Dakota for carving out some additional exceptions to this bill. We need to conform to this bill, and I think we can to our needs and our specific interests in North Dakota.



**Senator Nodland:** Said that his interpretation is that it would cover the majority of our largest manufacturers in North Dakota. He said he thinks this makes it gray and there could be a lot of suites pertaining to that.

**John:** Said that if you have a better way of describing that but he said there is no requirement that says just because you are handling hazardous materials that gives the manufacturer the need to have some kind of policy prohibiting the firearms. He said they are not saying that, we are saying that in some instances the manufacturer or business may see a need to have such a policy because of the risks that are involved. He said he would defer to them to make that decision certainly we are not trying to keep firearms out of parking lots across the state. We are trying to draw some boundaries and perimeters within they can operate. He said most businesses don't have such policies whether this bill passes or not it will not have much bearing on ninety nine percent of the businesses.

**Senator Schneider:** He said so much seems to hinge on whether or not there is a parking lot the employer uses. Even if we were to pass all of the amendments that you offered would an employee be able to get around those by parking on the street or would the employer be able to prohibit someone from bringing a gun to work regardless of where they park?

**John:** He assumes they could get around it by parking on the street.

**Andy Peterson, ND Chamber of Commerce:** Testimony Attached (4).

**Janelle Moss, Executive Director of the North Dakota Council on Abused Women's Services:** Testimony Attached with Proposed Amendments (5).

**Christopher T. Dodson, Executive Director of the North Dakota Catholic Conference:** Testimony Attached (6).

**Tyler Rupp, ND Petroleum Council:** He said they oppose this bill due to the nature of the companies they represent. He said they would support the amendments as offered.

**Chuck Hurter, Director of Human Resources of Supervalu:** Testimony Attached (7).

**Alex C. Schweitzer, the Superintendent of the North Dakota State Hospital and North Dakota State Developmental Center of the Department of Human Services:** Testimony Attached (8).

**Pat Heinert, Sheriff of Burleigh County:** Testimony Attached (9).

**Keith Witt, Chief of the Bismarck Police Department:** Testimony Attached (10). In support of John Olson's amendment (2).

**Tom Balzer, ND Motor Carriers:** Said there are a lot of reasons why their members need to prevent weapons out there. These vehicles are on the property owner's property and they are responsible when the drivers are gone. These vehicles are a lot of times unattended and unsecured and open to anyone for break in. The last thing they would want

is a stolen firearm from one of these vehicles. He said he is in support of John Olson's amendment (2).

Questions for Darin followed

**Darin:** He talked about Montana and Wyoming. He said the bill was killed in Wyoming in the first committee. Montana he is less familiar with. They passed a bill that says the federal government can't regulate firearms as long as they are manufactured and stamped, made in Montana. He doesn't know if the bill was killed on the floor or not.

**Chairman Klein:** Closed the hearing.

# 2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1438  
March 28, 2011  
Job Number 16081

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to an employers' prohibition on firearm possession

### Minutes:

Discussion and Handouts

**Chairman Klein:** Said committee we are going to come to order. We will be discussing 1438.

**Senator Nodland:** Said for discussion he has been checking with quite a few people and quite a few law enforcement people and has been getting a fair amount of emails. He said they have been getting so many amendments and everyone wants to be exempted out of it and where does it end. He would rather vote on the bill as it came to them.

**Senator Schneider:** He said that makes a lot of sense but there is one exception he wanted to bring to the committee for consideration would be the property owned or leased by domestic violence, sexual assault organization, domestic violence shelter or a transitional housing unit, defender treatment program or visitation exchange center. He said he thinks Mr. Goens agreed on this one. He said it gets to be a dangerous environment. He would like to move to adopt the amendment J. It was the consolidated amendment, exclusively letter J.

**Senator Murphy:** Seconded the motion.

**Senator Laffen:** Said that if there is a problem at a place like this it seems that the person that will do the damage would come in with a gun anyway. He said the only thing this ends up doing is taking away any self defense by the rest of the people there. He isn't sure this would help that.

**Senator Schneider:** Said that is valid but he trusts these advocates to know their own situations better than they do. He did consider that as well and it seemed to be the one amendment no one had any problem with.

**Chairman Klein:** Said he had thought that was one of the areas they could look at and visiting with Darin Goens he summed it up similar to Senator Laffen. This is a time when someone will know there are no guns permitted here and it does put those folks at risk.

**Senator Murphy:** Asked if this would preclude someone at the center from having a gun, aren't we just talking about keeping it in your trunk or in your car.

**Chairman Klein:** Said that this would mean that they could not be on the property.

**Senator Schneider:** Said he would have to go back and review the legislation but he didn't think this would keep the employer from saying you could bring guns in if you want to. So if for some reason the center wanted to arm their employees they could. In response to the fact that bad people aren't going to obey the law, the only situation where this may prevent someone from engaging in gun violence would be if they provided notice before hand that guns were not allowed on the premise, then the gun would not be there because they abided by that policy.

**Senator Laffen:** Said that if we exempt those places and so now they say they can't have guns here, doe that override conceal and carry then. What if a woman really felt she needed to have a concealed weapon, she has the permit and she needs it for her protection and she is going here, does this override that?

**Senator Schneider:** Said that was a little unclear and he doesn't know.

**Chairman Klein:** Said everyone has a good point.

**Senator Andrist:** Said Alex Schweitzer's testimony was also compelling but someone had brought it up that if it is also the state penitentiary property it is already precluded. He asked if anyone checked it out.

**Chairman Klein:** Said that is his understanding, it would include the hospital in Jamestown. The clerk will call the roll for a do pass on the amendment J as proposed by Senator Schneider.

Roll Call Vote: Yes-4 No-3

**Senator Nodland:** Said he thinks crew camps are as important as domestic violence. He went on to explain why they should also be exempt. He moved to add item, I.

**Senator Laffen:** Seconded the motion.

Discussion followed about the ability for them to put their guns in the office and what they would do if they didn't have a twenty four hour office.

**Senator Larsen:** Said that we have the right to carry and bear these arms and it is their second amendment right. The pickup is their private stuff and he went on to give an example of living in his vehicle when he worked in the oil field and that being the only place these crew camp workers have that is their own. He also addressed the issue of the domestic violence centers and that it is important for them to be able to defend themselves.

**Chairman Klein:** Called for the roll call vote on the amendment I to exclude the crew camps.

Roll Call Vote: Yes-2 No-5

**Senator Schneider:** Moved a do pass as amended.

**Senator Laffen:** Seconded the motion.

**John Olson:** He asked for the floor. He said he has to distribute a couple of emails, Attached (1 & 2), from on behalf of his clients. He addressed the emails and the concerns within.

**Senator Murphy:** Said it would seem to me if it is homeland security they would be able to supersede state law.

**John:** Said he doesn't believe it does and also stated that the regulation they are talking about, the regulation of firearms the possession of firearms on the property itself is not prohibited. What is required is that if the railroad finds the firearm or weapon they have to report it, so that's the rub. Homeland security does not provide for a prohibition on these facilities or in the parking lots. He said it is an ownerless report.

**Senator Schneider:** Asked if under section one subsection one b, a public or private employer is prohibited from making a verbal or written inquiry regarding the presence of a firearm in a locked or private vehicle; will there ever be a discovery?

**John:** Said that is what they are counting on. As a gun advocate myself and I am sure you are all gun advocates, I am sure the world would be much easier to live in if nobody ever knows about it, that is what will happen, right? We are all hoping these guns will be in the car under lock and key and nobody will ever find out about it. We can't report something we don't know. It is going to occur that we are going to know about an occurrence or two, three or four and that is what is going to happen we are going to have to report it. He said that Senator Schneider makes a great point.

**Darin:** In response to the railroad he spent a considerable amount of time researching after the hearing and he searched the federal regulation dealing with railroad. He stated from a document about weapons. He also said Amtrak is now required to accept firearms with checked luggage. The questions he raised whether or not it is passenger or freight the railroads use the same facilities, certainly the same rails and a lot of the same faculties. He said the most compelling reason to vote to resist this amendment, there is a homeland security exclusion already written into the exemptions of the bill. He said the railroad has been fighting this for years and asked why the railroads haven't gone to homeland security and asked them to write them a letter with a reporting requirement. Homeland security doesn't allow you to operate if you are an affected industry, you would have to have a preapproved plan in place.

**Chairman Klein:** Said they would hold on the motion.

# 2011 SENATE STANDING COMMITTEE MINUTES

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

HB 1438  
March 29, 2011  
Job Number 16108

☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to an employers' prohibition on firearm possession

## Minutes:

Discussion and Vote

**Chairman Klein:** Called the meeting to order on 1438. He asked for a recede in the motions made by Senator Schneider and Senator Laffen.

**Senator Nodland:** Made a motion to reconsider amendment J.

**Chairman Klein:** Said we have a motion for reconsideration for the amendment we added to 1438, seconded by Senator Larsen. The clerk will call the roll for reconsideration on the amendment.

Roll Call Vote: Yes-5 No-2

**Senator Nodland:** Moved to remove the amendment.

**Senator Larsen:** Seconded the motion.

Discussion on removal of the amendment

Roll Call Vote: Yes-4 No-3

**Senator Nodland:** Moved a do pass on House Bill 1438 as it stands with the first engrossment from the House.

**Senator Schneider:** Seconded the Motion.

Roll Call Vote: Yes-7 No-0

**Senator Larsen** to carry the bill

## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1438

Page 3, line 3, remove "or", and after "security" insert ", or subject to the requirements of 49 CFR 1580.105"

Page 3, after line 16, insert:

- g. Any property owned or leased by a public or private employer or the landlord of a public or private employer where hazardous materials may be stored, used, or transported, or where such property is used for services critical and necessary to the public including, but not limited to, public utilities such as electricity, oil, gas, and communications.
- h. Any property owned or leased by a public or private employer or the landlord of a public or private employer that has reasonable belief of actual or perceived threats of physical violence, domestic violence, or intimidation.
- i. Crew camps.
- j. Any property owned or leased by a domestic violence sexual assault organization, domestic violence shelter or transitional housing unit, offender treatment program, or visitation and exchange center."

Renumber accordingly

Date: 3/28/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1438

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Schneider Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein		✓	Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen		✓			
Senator Oley Larsen		✓			

Total (Yes) 4 No 3

Absent 0

Floor Assignment \_\_\_\_\_

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

John Olson's amendment, only letter J



Date: 3/28/11  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1438

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein		✓	Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy		✓
Senator John Andrist		✓			
Senator Lonnie J. Laffen		✓			
Senator Oley Larsen		✓			

Total (Yes) 2 No 5

Absent 0

Floor Assignment \_\_\_\_\_

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

John Olson's Amendment-letter I

Date: 3/29/11  
Roll Call Vote # 3

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1438

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☒ Reconsider

Motion Made By Senator Nodland Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider		✓
VC George L. Nodland	✓		Senator Philip Murphy		✓
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment \_\_\_\_\_

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

*Reconsider the adoption of John Olson's amendment  
part J.*

Date: 3/29/11  
Roll Call Vote # 4

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1438

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Schneider

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider		✓
VC George L. Nodland	✓		Senator Philip Murphy		✓
Senator John Andrist		✓			
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 4 No 3

Absent 0

Floor Assignment \_\_\_\_\_

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

Remove the John Olson's amendment Part J.

Date: 3/29/11  
Roll Call Vote # 5

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1438

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Schneider

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Larsen

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

**REPORT OF STANDING COMMITTEE**

HB 1438, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1438 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1438

Chairman Duane DeKrey  
And Members of the Judiciary Committee

I am here to testify in support of HB 1438.

I worked for UPS for 30 years in Fargo. One morning several years ago, the drivers were read a memo that stated employees would no longer be allowed to have firearms in their private vehicle on the company property. I asked the reason for the new policy and was not given an answer. I asked for a copy of the policy and was not able to obtain one. We were told that our private vehicles would be subject to search and seizure, and our jobs would be on the line. Several employees who live in rural areas vented frustration over not being able to hunt on the way home after work. The policy apparently does not apply to customers who use the same parking lot to legally ship firearms with UPS. In fact, UPS invites them and their shipping business.

I believe this is a discriminatory policy. This prohibition subjects me and my private vehicle to search without the benefit of warrant or officer of the law being present.

I am an avid target shooter. The only time that I have to practice outdoors is in the evening after work before sunset. With the additional time burden of being required to return to my home from work in order to pick up my shooting equipment, my practice time is shortened by 30 to 40 minutes and is often impossible.

I see no reason that an employer should be allowed to impose stricter rules on employees than those that they impose on their customers. I am allowed to have legal, secured, cased firearms in my vehicle on public roads and parking areas, and am not subject to search and seizure without probable cause or warrant. This right should not be surrendered based upon Company Policy.

HB 1438 will correct this. I hope that you will support its passage.

Sincerely,

William Brackin  
832 8<sup>th</sup> Ave E.  
West Fargo, ND. 58078



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1438  
February 9, 2011

Mr. Chairman and members of the committee, My name is Bill Shalhoob and I am here today representing the North Dakota Chamber of Commerce, the principal business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing five local chambers with over 5,000 members. As a group we stand in opposition to HB 1438 and urge a do not pass from the committee on this bill.

As I travel I often see signs as I enter buildings prohibiting arms from the premises. I will note the only time I've personally encountered this in North Dakota is at Dakota Magic Casino near Hankinson. The choice between the right to bear arms and the right of a private property owner to control what happens on his property may be difficult but the Chamber will support the property rights choice in this case. Employers and individuals have the right to control their property. Prohibitions for firearms in federal buildings or state courthouses as well as posted no hunting or trespassing land come to mind as examples. This bill prohibits a business from fully controlling their property in accordance with the policy they desire and we believe that is wrong. The right to bear arms should not extend to a specific prohibition from the property owner.

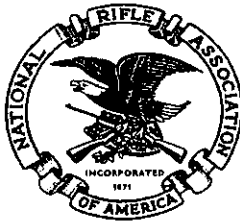
Thank you for the opportunity to appear before you today in opposition to HB 1438. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*

PO Box 2639 Bismarck, ND 58502 Toll-Free: 800-382-1405 Local: 701-222-0929 Fax: 701-222-1611  
www.ndchamber.com ndchamber@ndchamber.com



NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
11250 WAPLES MILL ROAD  
FAIRFAX, VA 22030  
FAX (703) 267-3976



# NRA-ILA

Tuesday, March 22, 2011: Darin Goens. Testimony before the ND Senate Industry, Business and Labor Committee. House Bill 1438.

On behalf of the National Rifle Association, I would respectfully ask you to support **HB 1438**. This bill came out of the House with overwhelming bi-partisan support, passing 82-12. This important Second Amendment legislation would protect the rights of gun owners across the state by preventing employers from enforcing policies against employees and invitees for storing lock guns in personal vehicles. The bill does **NOT** deal with carrying a gun on the actual premises.

Both the U.S. Constitution and the North Dakota Constitution protect the right to keep and bear arms. A person's constitutional rights do not disappear because they chose to work. Yes, there are plenty of policies business would prefer, but they are already required to comply with all sorts of regulations from OSHA rules to civil rights laws to hour and wage restrictions.

Members of the National Rifle Association hold all personal freedoms and liberties in high regard, and that extends to private property rights. That is why it is particularly disturbing that some of North Dakota's largest corporations would band together to trample on the private property rights of ND employees and business patrons by attempting to micromanage the contents of their locked vehicles in the parking lot. We find it reprehensible that they would defend policies that allow illegal, warrantless searches conducted by private security. Even more egregious, these companies want to brush aside the constitutional rights of their employees and visitors, rights guaranteed by the Bill of Rights.

On the contrary, the 10<sup>th</sup> Circuit Court of Appeals upheld the Oklahoma worker protection/parking lot law, finding that there was no constitutional taking of a private property right from employers. I ask you, what private property interest does a company have in micromanaging the contents of a person's private vehicle?

Opponents of this legislation have preyed on the irrational fear tactics employed by so many other anti-gun forces. These are largely the same arguments made by opponents to concealed carry and Castle Doctrine. The message they are sending says you shouldn't trust a citizen with a gun, but North Dakota's experience with concealed carry have already proven them wrong, demonstrating that law-abiding gun owners are trustworthy.

It is also important to note that HB 1438 specifically exempts schools, correctional facilities, and places with Homeland Security protections, among other places. In a recent letter to ND lawmakers from bill opponents, the authors wrote "In some instances there are sound reasons for policies..." What are these instances? The letter NEVER identified a single public safety issue or episode as justification for suspending the constitutional rights of North Dakotans. There is no documented evidence that storing guns in locked vehicles presents any danger to a business. They would advocate an all-time low standard for that application of the U.S. Bill of Rights because their policies make sense in "some instances."

- Thirteen States have already adopted this legislation
- The Courts have already upheld the law against challenges from corporations in other states. Specifically, the 10 Circuit Court of Appeals said the legislation does NOT constitute an unconstitutional taking of property rights.
- Businesses can still restrict guns on their property. This legislation only deals with parking lots, and more specifically, the contents of locked private vehicles in those parking lots
- Businesses have different responsibilities than other private property owners (such as homeowners and landowners). By inviting the public to their property, they voluntarily submit themselves to OSHA laws, minimum wage standards, child labor laws, etc.
- North Dakotans have a strong history of gun ownership and hunting heritage. Whether hunting before/after work, target shooting or carrying for personal protection before/after work, employees should have a safe and legal place to store their firearms during working hours. This bill strikes that balance by allowing guns to be stored in locked vehicles in the parking lot, out of sight
- Opponents of this bill are advocating policies which: violate the property rights of a person's private vehicle, condone illegal searches under the Fourth Amendment, and impose undue restrictions on the guarantees of the Second Amendment.

## PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1438

Page 3, line 3, remove "or", and after "security" insert ", or subject to the requirements of 49 CFR 1580.105"

Page 3, after line 16, insert:

- g. Any property owned or leased by a public or private employer or the landlord of a public or private employer where hazardous materials may be stored, used, or transported, or where such property is used for services critical and necessary to the public including, but not limited to, public utilities such as electricity, oil, gas, and communications.
- h. Any property owned or leased by a public or private employer or the landlord of a public or private employer that has reasonable belief of actual or perceived threats of physical violence, domestic violence, or intimidation.
- i. Crew camps.
- j. Any property owned or leased by a domestic violence sexual assault organization, domestic violence shelter or transitional housing unit, offender treatment program, or visitation and exchange center."

Renumber accordingly

# **§ 1580.105**

(d) *Timing-class I freight railroad carriers.* Upon request by TSA, each Class I freight railroad carrier described in paragraph (a) of this section must provide the location and shipping information to TSA no later than:

- (1) Five minutes if the request concerns only one rail car; and
- (2) Thirty minutes if the request concerns two or more rail cars.

(e) *Timing-other than class I freight railroad carriers.* Upon request by TSA, all persons described in paragraph (a) of this section, other than Class I freight railroad carriers, must provide the location and shipping information to TSA no later than 30 minutes, regardless of the number of cars covered by the request.

(f) *Method.* All persons described in paragraph (a) of this section must provide the requested location and shipping information to TSA by one of the following methods:

- (1) Electronic data transmission in spreadsheet format.
- (2) Electronic data transmission in Hyper Text Markup Language (HTML) format.
- (3) Electronic data transmission in Extensible Markup Language (XML).
- (4) Facsimile transmission of a hard copy spreadsheet in tabular format.
- (5) Posting the information to a secure website address approved by TSA.
- (6) Another format approved by TSA.

(g) *Telephone number.* Each person described in paragraph (a) of this section must provide a telephone number for use by TSA to request the information required in paragraph (c) of this section.

- (1) The telephone number must be monitored at all times.

(2) A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this paragraph.

(h) *Definition.* As used in this section, *Class I* has the meaning assigned by regulations of the Surface Transportation Board (STB) (49 CFR part 1201; General Instructions 1-1).

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23657, May 20, 2009]

# **49 CFR Ch. XII (10-1-10 Edition)**

## **§ 1580.105 Reporting significant security concerns.**

(a) *Applicability.* This section applies to:

(1) Each freight railroad carrier that operates rolling equipment on track that is part of the general railroad system of transportation.

(2) Each rail hazardous materials shipper.

(3) Each rail hazardous materials receiver located with an HTUA.

(4) Each freight railroad carrier hosting a passenger operation described in § 1580.1(a)(4) of this part.

(5) Each operator of private cars, including business/office cars and circus, on or connected to the general railroad system of transportation.

(b) Each person described in paragraph (a) of this section must immediately report potential threats and significant security concerns to DHS by telephoning the Freedom Center at 1-866-615-5150.

(c) Potential threats or significant security concerns encompass incidents, suspicious activities, and threat information including, but not limited to, the following:

- (1) Interference with the train crew.
- (2) Bomb threats, specific and non-specific.
- (3) Reports or discovery of suspicious items that result in the disruption of railroad operations.
- (4) Suspicious activity occurring on-board a train or inside the facility of a freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver that results in a disruption of operations.
- (5) Suspicious activity observed at or around rail cars, facilities, or infrastructure used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.
- (6) Discharge, discovery, or seizure of a firearm or other deadly weapon on a train, in a station, terminal, facility, or storage yard, or other location used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.
- (7) Indications of tampering with rail cars.

(8) Information relating to the possible surveillance of a train or facility.

49 CFR 1580

Transportation Security Administration, DHS

§ 1580.107

storage yard, or other location used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver.

(9) Correspondence received by the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver indicating a potential threat. Other incidents involving breaches of the security of the freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver's operations or facilities.

(d) Information reported should include, as available and applicable:

(1) The name of the reporting freight railroad carrier, rail hazardous materials shipper, or rail hazardous materials receiver and contact information, including a telephone number or e-mail address.

(2) The affected train, station, terminal, rail hazardous materials facility, or other rail facility or infrastructure.

(3) Identifying information on the affected train, train line, and route.

(4) Origination and termination locations for the affected train, including departure and destination city and the rail line and route, as applicable.

(5) Current location of the affected train.

(6) Description of the threat, incident, or activity.

(7) The names and other available biographical data of individuals involved in the threat, incident, or activity.

(8) The source of any threat information.

[73 FR 72173, Nov. 26, 2008, as amended at 74 FR 23657, May 20, 2009]

**§ 1580.107 Chain of custody and control requirements.**

(a) *Within or outside of an HTUA, rail hazardous materials shipper transferring to carrier.* Except as provided in paragraph (g) of this section, at each location within or outside of an HTUA, a rail hazardous materials shipper transferring custody of a rail car containing one or more of the categories and quantities of rail security-sensitive materials to a freight railroad carrier must:

(1) Physically inspect the rail car before loading for signs of tampering, including closures and seals; other signs that the security of the car may have

been compromised; suspicious items or items that do not belong, including the presence of an improvised explosive device.

(2) Keep the rail car in a rail secure area from the time the security inspection required by paragraph (a)(1) of this section or by 49 CFR 173.31(d), whichever occurs first, until the freight railroad carrier takes physical custody of the rail car.

(3) Document the transfer of custody to the railroad carrier in writing or electronically.

(b) *Within or outside of an HTUA, carrier receiving from a rail hazardous materials shipper.* At each location within or outside of an HTUA where a freight railroad carrier receives from a rail hazardous materials shipper custody of a rail car containing one or more of the categories and quantities of rail security-sensitive materials, the freight railroad carrier must document the transfer in writing or electronically and perform the required security inspection in accordance with 49 CFR 174.9.

(c) *Within an HTUA, carrier transferring to carrier.* Within an HTUA, whenever a freight railroad carrier transfers a rail car containing one or more of the categories and quantities of rail security-sensitive materials to another freight railroad carrier, each freight railroad carrier must adopt and carry out procedures to ensure that the rail car is not left unattended at any time during the physical transfer of custody. These procedures must include the receiving freight railroad carrier performing the required security inspection in accordance with 49 CFR 174.9. Both the transferring and the receiving railroad carrier must document the transfer of custody in writing or electronically.

(d) *Outside of an HTUA, carrier transferring to carrier.* Outside an HTUA, whenever a freight railroad carrier transfers a rail car containing one or more of the categories and quantities of rail security-sensitive materials to another freight railroad carrier, and the rail car containing this hazardous material may subsequently enter an HTUA, each freight railroad carrier must adopt and carry out procedures to

● NO  
SELF  
DEFENSE  
ANY TIME



BY ORDER OF MANAGEMENT

**NRA-ILA**

# **Fights for Workers' and Customers' Rights**



BY CHRIS W. COX  
NRA-ILA Executive Director

**Does a  
parking lot  
have more  
rights than  
you do?**

... I know. But your NRA-ILA is fighting against corporate conglomerates who argue that the rights of a patch of asphalt outside a business trump yours.

They argue that companies can void the rights of law-abiding citizens on company property, even if the property is open to the general public. If you stop at a grocery store, for instance, they argue that the store can prohibit you from leaving a firearm locked in your vehicle while you shop. It doesn't matter to them whether you lawfully transport a firearm for protection, recreational shooting, or hunting—even if you have a Right-to-Carry permit.

It's not just guns. Lobbyists for big business in Florida claim that they can ban books, Bibles, or even a copy of the U.S. Constitution, from your vehicle as well. Their argument is simple: Any business can declare the constitutional rights of a person to be null and void, if that person is on company property.

The issue first came to a head at a Weyerhaeuser paper mill in Valliant, Okla. One business lobbyist ruefully recounted the Oklahoma incident to the *Atlanta Journal-Constitution*, saying that "Dogs were brought in to do a drug shakedown—the dogs had been crosstrained for ATF use, so they would hit on explosives and gunpowder or guns ... I think there were seven employees who had guns in their trucks or cars. They were terminated ... they went a little too far in the Oklahoma case."

If the warrantless search of private vehicles by police dogs is a "little too far," I'd hate to see these companies really put

some effort into violating our rights. Companies justify these police-state tactics under the rallying cry of "property rights." But property does not have rights. People do.

Property owners do have rights, to be sure. So do employers. Property owners can prohibit trespassers, and companies can establish rules for conduct in their workplaces. The Georgia Chamber of Commerce quoted one newspaper as saying, "an employer has the right to ban extreme body piercings and tattoos, or to insist on jackets and ties. An employer can prohibit workers from showing up at work with Girl Scout cookie order forms or raffle tickets." This feeble comparison overlooks the obvious: There is no constitutional right to dress as you please, or to sell cookies at work.

When companies invite their employees and customers to park on their property, however, the property rights of those businesses do not magically balloon and blot out the constitutional rights of their employees and customers. Property rights are a matter of law. The right to self-defense is not only guaranteed by the Second Amendment,

ing of Second Amendment rights for legitimacy. Often the NRA and its supporters will argue that gun ownership is an inalienable right provided for by the Second Amendment to the U.S. Constitution. That is not consistent with the text of the amendment nor with the courts that have interpreted it."

No, this statement was not written by a lawyer from a gun ban group. It was circulated to Georgia legislators by the constitutional scholars at the Georgia Traditional Manufacturers Association. That's right—business lobbyists are arguing that you simply have no Second Amendment rights at all.

So it should be no surprise to learn that the business lobbyists have teamed up with the gun ban groups to defeat common-sense bills that would protect your right to self-defense. To defeat a bill in the Florida legislature, the Florida Retail Federation hired a lobbyist who had previously been the Southeast Regional Director for the Brady Campaign and the Million Mom March. You know what they say about birds of a feather.

Opening a business subjects the

their own safety. These policies cut to the core of your natural, guaranteed right to self-defense, and they render Right-to-Carry provisions meaningless.

The arrogance of the business lobbyists runs thick. "Parking on a company's property is a privilege, not a 'right,'" sniffed one business group. I'd like them to tell that to a customer who's elderly or mobility-impaired.

These ridiculous arguments are even crazier when you consider the fact that every one of the reform bills has included liability protection for business owners, which they don't have under current law. So even though the bills actually help businesses, the big corporate lobbyists, in their greed for power, opposed them.

The corporate giants have insulted state legislators for even considering reform bills. Mark Wilson of the Florida Chamber of Commerce told the *Miami Herald* he questioned how "you can be smart enough to be in the legislature and still consider this bill seriously." And the Georgia Chamber of Commerce took top prize for hysterical alarmism, claiming that a reform bill "fails to protect businesses and job creators and their employees who may be the subject of terrorist attacks."

I wonder just how many people would agree that forced disarmament is the best protection from terrorist attacks. But the real impact of these policies is not nearly so hypothetical. Workers have lost their jobs to corporate gun ban policies. Other honest people have been victimized by violent criminals on anti-gun corporations' property. Our files of these incidents are growing every day. Will your job—or your safety—be next?

## ***That's right—business lobbyists are arguing that you simply have no Second Amendment rights at all.***

but is a "natural right" that predates the Constitution.

But Big Business even disputes that simple truth. Consider the following quote, and guess where it came from: "Supporters of the bill who favor placing gun rights above the rights of property owners rely on a questionable understand-

owner to countless regulations. Businesses are not allowed to discriminate against employees and customers on the grounds of race, color, religion, or disability. But these gun ban policies are blatant discrimination against people who choose to exercise a constitutional right and take responsibility for

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This story first appeared in the August 2007 *American Rifleman*.

**Testimony of Andy Peterson**  
**North Dakota Chamber of Commerce**  
**HB 1438**  
**March 22, 2011**

Chairman Klein and members of the Senate Industry, Business and Labor Committee, my name is Andy Peterson, president of the North Dakota Chamber of Commerce. I am here today representing the North Dakota Chamber of Commerce, the principal business advocacy group in North Dakota. The North Dakota Chamber of Commerce stands in opposition to HB 1434 and urges a do not pass recommendation on this bill.

The Chamber strongly believes this bill infringes on the rights of business owners to deny access to their property as they deem appropriate. Our constitution exists to grant rights, not to act as a vehicle for one right to trample upon, or succeed in importance over another right.

The Chamber believes business and property owners in North Dakota should retain the right to set reasonable policies regarding the possession of firearms on company property. Business owners/operators that want to create, or have concerns about creating a safe environment, should be able to prohibit the possession of firearms on their property. Homeowners, and citizens at large, are allowed to protect their property in such a manner by prohibiting the possession of firearms on their property or in their homes. Just because businesses have employees does not diminish their rights as property owners. As such, businesses should be permitted the same right. It should be the right of the company to enforce the firearm policy they deem appropriate, just as it is the right of the customer to refuse to conduct business with a company that has such a policy in place.

Posting signs prohibiting firearms in a building is currently standard policy for many businesses. This bill seeks to chip away at private property rights by taking away the ability of property owners to make their own decision on the matter. Essentially, HB 1438 prohibits a business from fully controlling its property in accordance with the policy it desires. This type of infringement on private property is wrong. The right to bear arms should not extend to specifically prohibit property owners from enforcing their own rights and we encourage the committee to give this bill a do not pass recommendation.

Thank you for your consideration and I would be happy to answer any questions at this time.



# NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA

Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • [ndcaws@ndcaws.org](mailto:ndcaws@ndcaws.org)  
March 22, 2011

Testimony on HB 1438

Senate Industry, Business and Labor

Chair Klein and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the North Dakota Council on Abused Women's Services. Our Coalition is a membership based organization and consists of 21 local domestic violence and rape crisis centers located throughout the state that provide services to victims in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in opposition to HB 1438.

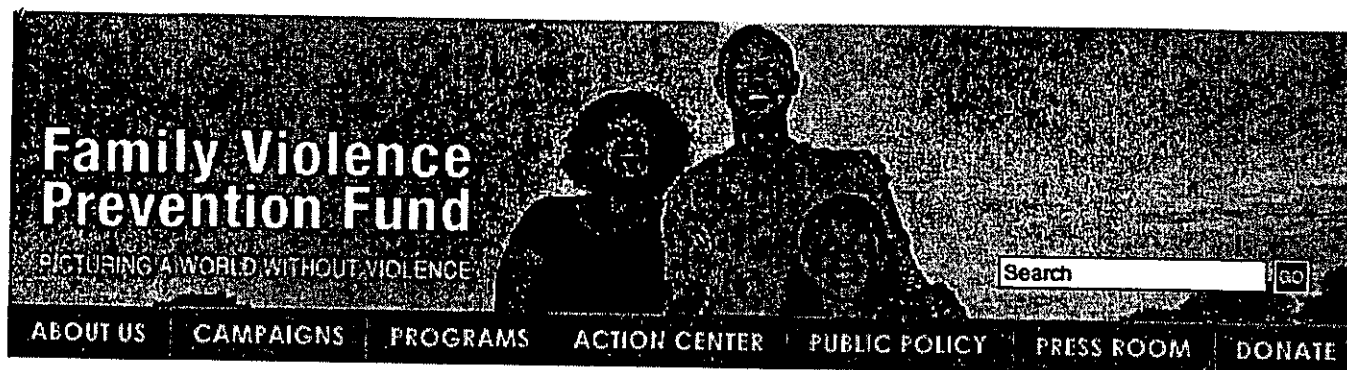
Firearms pose a particular threat to domestic violence victims. Nationally, firearms were used to kill more than two thirds of spouse and ex-spouse homicide victims between 1990 and 2005. In one study, domestic violence assaults involving a firearm were 23 times more likely to result in death than those involving other weapons or bodily force.

Domestic violence homicide is the most extreme form of domestic violence. Although North Dakota has a relatively low crime and homicide rate, over the last 30+ years at least ½ of all of the homicides in North Dakota have been a result of domestic violence. In the last 10 years alone, 30 victims were murdered as a result of domestic violence. All but seven of these homicides were committed using firearms.

According to the Family Violence Prevention Fund, domestic violence is a security and liability concerns for employers. 94% of corporate security directors surveyed rank domestic violence as a high security problem at their company. Employers that fail to protect their employees from violence at work may be liable. Jury awards for inadequate security suits average \$1.2 million nationwide and settlements average \$600,000. In the case of LaRose v. State Mutual Life Assurance Co., Francesia La Rose's family filed a wrongful death action against her employer when she was murdered by a former boyfriend at the work site. The employer paid a settlement of \$850,000 for failing to protect her after being notified by a specific threat.

We are aware of and in support of the amendments to HB 1438 that Mr. Olson proposed. Although there are currently federal and state laws in place that prohibit perpetrators from possessing a firearm if they are subject to a domestic violence protection order (NDCC 14-07.1-01, 14-07.1-02, 14-07.1-03) or if they have been convicted of a "misdemeanor crime of domestic violence" 18 U.S.C. 922 (g) (8), (9), we believe the amendments provide additional safeguards for victims and employers and therefore urge you to adopt the amendments or request a DO NOT PASS on HB 1438.

Thank you.



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## FEATURES

### Seven Reasons Employers Should Address Domestic Violence



Employers face numerous human resource concerns, with limited time and money. Often a decision to focus on a specific problem is not made until the problem becomes significant and costly. Historically, problems with a social stigma are less likely to receive attention, as both employers and employees may be reluctant to acknowledge that these problems exist.

Domestic violence was a hidden concern that did not show up on the public's radar screen until relatively recently. Some employers are addressing it, but many more are not. The following are seven compelling reasons that employers should take action on this issue.

#### Reason 1. Domestic violence affects many employees.

Nearly one-third of American women (31 percent) report being physically or sexually abused by a husband or boyfriend at some point in their lives.<sup>1</sup>

More than one million people report a violent assault by an intimate partner every year in the U.S.<sup>2</sup>

At least one million women and 371,000 men are victims of stalking in the U.S. each year. Stalkers often follow the victim to the workplace.<sup>3</sup>

#### Reason 2. Domestic violence is a security and liability concern.

Ninety-four percent of corporate security directors surveyed rank domestic violence as a high security problem at their company.<sup>4</sup>

Employers who fail to protect their employees from violence at work may be liable. Jury awards for inadequate security suits average \$1.2 million nationwide and settlements average \$600,000.<sup>5</sup>

In the case of *La Rose v. State Mutual Life Assurance Co.*, Francesia La Rose's family filed a wrongful-death action against her employer when she was murdered by a former boyfriend at the work site. The employer paid a settlement of \$850,000 for failing to protect her after being notified of a specific threat.<sup>6</sup>

#### Reason 3. Domestic violence is a performance and productivity concern.

In one study of batterers, 41 percent had job performance problems and 48 percent had difficulty concentrating on the job as a result of their abusive behaviors.<sup>7</sup>

Thirty-seven percent of women who experienced domestic violence reported that the abuse had an impact on their work in the form of lateness, missed work, keeping a job, or career promotions.<sup>8</sup>

The Centers for Disease Control and Prevention estimates that the annual cost of lost productivity due to domestic violence equals \$727.8 million, with more than 7.9 million paid workdays lost each year.<sup>9</sup>

#### Reason 4. Domestic violence is a health care concern.

The national health care costs of domestic violence are high, with direct medical and mental health care services for victims amounting to nearly \$4.1 billion.<sup>10</sup>

Among women admitted to an emergency room for violence-related injuries, 37 percent were abused by an intimate partner.<sup>11</sup>  
In a study on the effects of violence, women who experienced any type of violence or abuse were significantly more likely to report being in "fair or poor" health, and were almost twice as likely to be coping with some form of depression.<sup>12</sup>

#### Reason 5. Domestic violence is a management issue.

In a 2002 survey of senior corporate executives, 91 percent said that domestic violence affects both the private and working lives of their employees.<sup>13</sup>

In addition, more than half (56 percent) of those surveyed were aware of employees who have been affected by domestic violence.<sup>14</sup>

In a 1994 survey, 66 percent of executives said their companies' financial performance would benefit from addressing the issue of domestic violence among their employees.<sup>15</sup>

#### Reason 6. Taking action in response to domestic violence works.

After participating in domestic violence training at a factory, the rate of employees asking for workplace counseling services for domestic abuse problems was 14 times what it had been prior to the training.<sup>16</sup>

When a sample group of 40 abused employees at the factory began using the domestic abuse counseling services, their average absence rate was higher than the factory's average absence rate. After using counseling services, the abused employees reduced their absenteeism rates to normal.<sup>17</sup>

#### Reason 7. Employers can make a difference.

Numerous corporations, government agencies and domestic violence experts are already addressing domestic violence, with great success. You can make a difference in your workplace and in the lives of employees who are facing abuse!

#### Notes

<sup>1</sup> Collins, K., Schoen, C., Joseph, S., Duchon, L., Simantov, E. & Yellowitz, M. (1999). Health Concerns Across A Woman's Lifespan: The Commonwealth Fund 1998 Survey of Women's Health.

<sup>2</sup> U. S. Department of Justice, Bureau of Justice Statistics, (2000). Intimate Partner Violence. NCJ 178247.

<sup>3</sup> U.S. Department of Justice, National Institute of Justice (2000). Full Report of the Prevalence, Incidence and Consequences of Violence Against Women. November, NCJ-183781.

<sup>4</sup> National Safe Workplace Institute Survey, as cited in Solomon, C.M. (1995). Talking frankly about domestic violence. Personnel Journal, 74, 64-66.

<sup>5</sup> Perry, P. (1994). Assault in the workplace. Law, May 1, 41.

<sup>6</sup> Burke, D.F. (January, 2000). When employees are vulnerable, employers are too. The National Law Journal.

<sup>7</sup> Maine Department of Labor. (2004). Impact of Domestic Offenders on Occupational Safety & Health: A Pilot Study.

<sup>8</sup> EDK Associates for The Body Shop, 1997. The Many Faces of Domestic Violence and Its Impact on the Workplace. New York: EDK Associates.

<sup>9</sup> U.S. Dept. of Health and Human Services, National Center for Injury Prevention and Control. March, 2003. Costs of Intimate Partner Violence Against Women in the United States. Atlanta, GA: Centers for Disease Control and Prevention.

<sup>10</sup> Ibid.

<sup>11</sup> U.S. Department of Justice, Bureau of Justice Statistics. (1997). Violence Related Injuries Treated in Hospital Emergency Departments, Special Report.

<sup>12</sup> Collins, K., Schoen, C., Joseph, S., Duchon, L., Simantov, E. & Yellowitz, M. (1999). Health Concerns Across A Woman's Lifespan: The Commonwealth Fund 1998 Survey of Women's Health.

<sup>13</sup> Patrice Tanaka & Company, Inc. (October 16, 2002). News Release: Corporate Leaders See Domestic Violence as a Major Problem That Affects Their Employees According to Benchmark Survey by Liz Claiborne, Inc. Contact Lauree Ostrofsky (212) 229-0500, x 236.

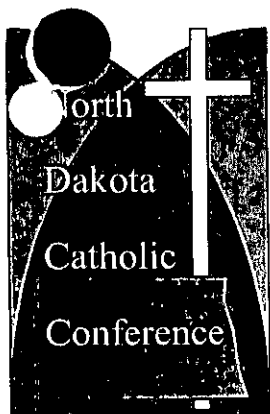
<sup>14</sup> Ibid.

<sup>15</sup> Roper Starch Worldwide for Liz Claiborne, 1994. Addressing Domestic Violence: A Corporate Response. New York: Roper Starch

<sup>16</sup> Urban, B.Y. (2000). Anonymous Foundation Domestic Abuse Prevention Program Evaluation: Final Client Survey Report. Chicago, IL: The University of Illinois at Chicago. Contact [byurban@aol.com](mailto:byurban@aol.com).

<sup>17</sup> Ibid.

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*Representing the Diocese of Fargo  
and the Diocese of Bismarck*

Christopher T. Dodson  
Executive Director and  
General Counsel

**To:** Senate Industry, Business and Labor Committee  
**From:** Christopher T. Dodson, Executive Director  
**Subject:** House Bill 1438 -  
**Date:** March 22, 2011

The North Dakota Catholic Conference opposes House Bill 1438 in its current form for two reasons. First, because it infringes upon the rights of religious entities. Second, because it does not exempt places where social services are provided.

### **Respect for the Rights of Religious Entities**

The North Dakota Catholic Conference believes that government should not infringe upon the right of a religious entity to direct its affairs according to its tenets unless the government has a compelling government interest and uses the least restrictive means to further that interest. HB 1438 fails that to meet that standard.

Some religious groups have moral objections to firearms and, understandably, would want policies reflecting those beliefs. The State of North Dakota should respect that right. House Bill 1438 exempts situations where the possession of a firearm is prohibited by other laws, but the only other law relevant to property owned by religious entities is Section 62.1-02-05. That section, however, only prohibits the possession of firearms at "churches or church functions." It is questionable whether that section applies to church parking lots and surrounding property. It certainly would not apply to church camps, monasteries, convents, and cemeteries. All property owned or leased by religious entities should be exempt to ensure that the entity's constitutional rights are not infringed.<sup>1</sup>

### **Providers of Social Services**

As providers of social services, the Catholic Church is also concerned about the ability of providers to enact policies that, in their experience and practice, best protect their patients and clients, especially the most vulnerable.

<sup>1</sup> Additional constitutional problems are posed by the bill's free speech restrictions on page 1, lines 12-13.

For hospitals, long-term care centers, residential treatment facilities, counseling centers, daycares, and preschools, the safety of those they serve is the first priority. House Bill 1438 appears to recognize that the location of some services should be exempt for safety reasons. It exempts, for example, elementary, middle, and high schools, as well as colleges and universities. It does not, however, exempt preschools or daycares. It exempts correctional facilities, but not hospitals, nursing homes, treatment centers, camps, or counseling centers. If certain facilities are exempt because of the persons they serve, why are not similar facilities not also exempt?<sup>2</sup>

The administrators of these service providers are professionals whose decisions regarding how best to protect the citizens they serve should be respected, not abrogated.

We ask that House Bill 1438 be fixed to fix these fundamental flaws or be given a Do Not Pass recommendation.

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<sup>2</sup> The properties of the Diocese of Fargo in south Fargo illustrates the inconsistency. The area consists of three adjacent, but legally distinct properties; a school, a church, and a pastoral center that includes Catholic Charities of North Dakota. The school is exempt. Some of the property of the church may be exempt. But the property where Catholic Charities serves clients is not.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1438

Page 2, line 28, after "nonpublic" insert "child care center, preschool."

Page 3, after line 16, insert:

"g. Property owned or leased by a religious corporation or organization.

h. Any hospital, long-term care facility as defined in section 50-10.1-01,  
residential treatment facility, or social service agency.

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1438

Page 3, line 1, after "c." insert:

"The state hospital; the developmental center at westwood park, Grafton, and westwood park; the regional human service centers, and the satellite offices of the regional human service centers; including any area at any of these locations leased to a third party.

d."

Page 3, line 4, replace "d." with "e."

Page 3, line 11, replace "e." with "f."

Page 3, line 13, replace "f." with "g."

Renumber accordingly



**HOUSE BILL 1438**  
**Senate Committee Industry, Business and Labor**

**TESTIMONY**

**Chuck Horter, Director of Human Resources**  
**Bismarck/Fargo Wholesale Food Distribution Centers**  
**SUPERVALU**

**Tuesday, March 22, 2011**

I am the Director of Human Resources for the Bismarck/Fargo Food Distribution Centers. I have been employed by SUPERVALU for over 29 years and oversee approximately 250 employees.

I am an avid deer and pheasant hunter and own a number firearms. I truly appreciate the liberty our country gives us in our right to bear arms.

SUPERVALU does not take issue with this basic fundamental right. Our issue is a concern for safety of our employees and right to dictate what can or cannot be brought on to our company property.

We have both union and nonunion employees and our work rules have dictated for decades that firearms are prohibited on company property. The intent is to remove a potentially dangerous venue either through mishap or elevated confrontation. This work rule has worked well over the years and we see no reason to change it.

While we respect hunters and the opportunities North Dakota offers with the great outdoors we feel that firearms should have no presence in the workplace.

We respectfully request your support in opposing HB 1438.

May I answer any questions?

Thank you.

**Testimony**  
**Engrossed House Bill 1438 – Department of Human Services**  
**Senate IBL Committee**  
**Senator Klein, Chairman**  
**March 22, 2011**

Chairman Klein, members of the Senate Industry, Business and Labor Committee, I am Alex C. Schweitzer, the Superintendent of the North Dakota State Hospital and North Dakota State Developmental Center of the Department of Human Services. I am here today to ask you to exempt the Department of Human Services Institutions and Regional Human Service Centers from Engrossed House Bill 1438.

The North Dakota State Hospital, North Dakota Developmental Center and the eight regional Human Service Centers are a part of the Department of Human Services. The Department of Human Services and these treatment facilities have the responsibility to assure that the vulnerable people we serve are safe and secure, that family members and the general public have confidence in our ability to provide safety and security, and that employees feel comfortable and safe in their work environment.

The Department of Human Services does not believe that having firearms on the grounds of its facilities is conducive to the goal of assuring safety and security for the above mentioned parties.

For example, the North Dakota State Hospital is accredited by the Joint Commission on Accreditation of Healthcare Organizations. As such, we must meet the standards of the Commission to remain accredited to provide services to people with mental illness and substance abuse issues and to receive Medicare and Medicaid payments.

The Joint Commission specifically requires health care organizations, such as the North Dakota State Hospital, to address and maintain a written plan describing how an institution provides for the security of patients, staff, and visitors. The Hospital is also required to conduct risk assessments to determine the potential for violence, provide strategies for preventing instances of violence, and establish a response plan that is enacted when an incident occurs.

While controlling access to the facility is imperative and ongoing surveillance of the grounds is a necessity, administrators of health care facilities must be alert to the potential for violence by health care workers, visitors, and patients. The stressful environment together with failure to recognize and respond to warning signs such as behavioral changes, mental health issues, personal crises, drug or alcohol use, and disciplinary action or termination, can elevate the risk of a staff member becoming violent towards a patient or other staff member. In addition, health facilities have an obligation to closely monitor the actions of visitors to the facility, who may cause violence. The North Dakota State Hospital is already seeing an increase in violence of patient-to-patient and patient-to-staff member.

The North Dakota State Hospital is a member of the Western Psychiatric State Hospital Association. A recent e-mail survey of the members indicates that all of these facilities have policies and procedures in place to assure a safe environment for consumers, staff, and visitors.

These policies and procedures include the following common elements:

- Not allowing firearms on the Hospital grounds.
- Requiring law enforcement and Department of Corrections transport officers to secure their firearms in a locked area according to hospital policy and procedure prior to entering a patient care/treatment area.
- Allowing law enforcement to carry firearms when responding to a specific emergency.
- Prohibiting security officers from bearing firearms that could come into the hands of patients, staff or visitors; and instead utilize other methods of behavioral controls.
- Policies and procedures that outline: techniques for identifying potentially violent individuals, violence de-escalation tools that health care workers can employ, violence management training, conducting violence assessments, and responding in the wake of a violent event.

In its current form, Engrossed House Bill 1438, exempts correctional facilities from the law. The North Dakota State Hospital shares a campus with the James River Correctional Center, a medium security prison. In fact, the two facilities share a common parking lot. The Hospital also serves an average of 300 prisoners per year in the Hospital's addiction treatment program on the shared campus. The prisoners in this addiction treatment program are still under the custody of the Department of Corrections and Rehabilitation. The State Hospital also houses and treats sexually dangerous individuals; we have increasingly dealt with issues of violence within this particular program.

It only seems logical that if the law will exempt correctional facilities and allow them to prohibit firearms in private vehicles on campus, then every consideration should be given to the same exemption for the Department of Human Services Institutions and regional Human Service Centers. After all, the Department of Human Services faces some of the same challenges in assuring a safe and secure environment for the vulnerable people we serve.

I urge you to exempt the North Dakota State Hospital, the North Dakota Developmental Center, and the eight regional Human Services Centers of the Department of Human Services from this law. I have attached a proposed amendment to Engrossed House Bill 1438.

I would be glad to answer any questions.

Industry, Business and Labor

Senator Jerry Klein, Chair

3-22-11

Good Morning:

I am Pat Heinert, Sheriff of Burleigh County.

I am here today in opposition to HB 1438.

I am opposed simple because in law enforcement we are asked to be peace keepers. By this I mean, one of the most important responsibilities we have is we are called upon to try and solve issues or differences between people. In my opinion this bill will cause people to have issues. Thus calling upon law enforcement to resolve these issues.

The law enforcement officer will be expected to resolve the issue one way or another. In order to do so the law enforcement officer will have to hear out all parties involved, determine what State law says, determine what company policy may say and attempt to resolve the issue that is now may be determined to be a company policy vs. a State law. Ultimately what is going to happen right there, right then is nothing.

The law enforcement officer will do everything they can to settle the people down, but ultimately will do nothing but write a report and forward the report to the States Attorney's Office for any action that may be taken at a later date by the filling of complaint with the Courts.

So in reality, the only thing that has been accomplished is to create a division between and employee and an employer.

Thank you for your time and consideration in this matter.

Testimony in Opposition of HB1438

March 22, 2011

Senate Industry, Business and Labor Committee

Testimony of Keith Witt

Chairman Klein and members of the Senate Industry, Business, and Labor Committee, I am offering these comments in opposition of HB1438. For the record, my name is Keith Witt and I am Chief of the Bismarck Police Department.

I am opposing HB1438 because I have serious concerns that it may lead to situations that could present obstacles to effective efforts to provide for public safety. I am definitely not opposed to the lawful possession of firearms and believe that it is an important right of individuals to keep and bear firearms. However, I also believe there are situations where there needs to be reasonable restrictions on the presence of firearms.

HB1438 seeks to provide protections to allow individuals to possess legally owned firearms in private motor vehicles in parking lots under the control of public or private employers with limited exceptions which are outlined in the bill. I am concerned that there needs to be additional language in the bill to provide for restriction against firearms in vehicles in parking lots if there are reasonable grounds to believe the presence of firearms may jeopardize safety or security. It is obvious that it is recognized there is a legitimate need to restrict firearms in some parking lots as there are five specific exceptions listed in Subsection 6. I believe it would be appropriate to recognize there may be additional legitimate and reasonable situations in addition to these listed exceptions that may arise. Not including language to provide for these situations will very likely create public safety issues and employers and law enforcement will lack authority to address the issues.

This is a lengthy bill that contains many different sections and some sections seem to be in conflict with each other. For example on lines 8-10 of Subsection 1 (a) on page 1, the bill states an employer may not prohibit any customer, employee, or invitee from possessing any legally owned firearm, if the firearm is lawfully possessed and locked inside or locked to a private motor

vehicle. Then in lines 3-7 of Subsection 1 (d) on page 2, the bill states basically the same thing but includes the language that the firearm must be out of sight within the vehicle. The bill also contains language throughout referring to a firearm in a vehicle or possessed for "lawful purposes". I am unsure of how someone can make that determination without being able to foresee the intent of the person possessing the firearm, especially since the bill prohibits the employer from making any inquiry regarding the presence of the firearm.

While I don't oppose the lawful possession of firearms and believe that in most situations, legally possessed firearms that are left in vehicles in parking lots will not present any problem or create any danger, I do believe that certain situations may arise in which restriction may be appropriate and necessary. Therefore, I am in opposition to HB1438 as written.

I appreciate your thoughtful consideration and encourage you to move for a do not pass recommendation for HB1438. I would be glad to answer any questions.



**John M. Olson**

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**From:** olsonpc@midconetwork.com  
**Sent:** Monday, March 28, 2011 12:59 PM  
**To:** John M. Olson  
**Subject:** Fw: guns

Sent from my Verizon Wireless BlackBerry

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**From:** "Sweeney, Brian J" <Brian.Sweeney@bnsf.com>  
**Date:** Mon, 28 Mar 2011 11:31:08 -0500  
**To:** 'olsonpc@midconetwork.com' <olsonpc@midconetwork.com>  
**Subject:** guns

I spoke with the Association of American Railroads' AVP of security about the guns issue, and here are a few more points:

When we make the report to the feds, we are then asked about the disposition of the discovery of the gun – was law enforcement called, what took place, etc. That means we have to talk to the employee and the feds.

This results in the person's entry onto a data base somewhere.

Each incident prompts a new call. There isn't a provision that says John Doe brought a gun onto the property yesterday, we checked and found he has a permit so we can ignore his gun today. We would have to report it each time.

**John Olson**

**From:** Bass, Bryan D <Bryan.Bass@bnsf.com>  
**Sent:** Friday, March 25, 2011 4:32 PM  
**To:** 'olsonpc@midconetwork.com'  
**Cc:** Sweeney, Brian J; Kearns, Dennis A; Stroik, Lawrence M; Johnsen, Andrew K (Govt Affairs); Heileman, William W  
**Subject:** RE: Proposed Email re HB 1438

Hello,

I am Bryan D. Bass, Senior Manager Homeland Security for BNSF Railway Company ("BNSF"). I have held this position for three years, though I have held other positions with the BNSF Railway Police for 17 years, and have worked in Law Enforcement for 27 years. My office is on the BNSF headquarters campus in Fort Worth, Texas.

BNSF is an interstate railroad carrier with over 32,000 miles of track in 28 States, including the State of North Dakota, and two Canadian Provinces. My job responsibilities include assessing and working to mitigate threats and risks to BNSF personnel and contractors, property, equipment, facilities and operations. I work regularly with the U. S. Department of Homeland Security and the federal Transportation Security Administration and their programs, regulations and requirements pertaining to threats and risks to railroads and the public.

I am aware of pending North Dakota House Bill No. 1438, containing restrictions on private employers in North Dakota including BNSF from taking action in response to reports of firearms on BNSF railroad property and facilities. We believe that this bill should it become law would seriously interfere with and impede the railroad's existing obligations under federal law, in particular, Section 1580.105 of Title 49 of the Code of Federal Regulations issued by TSA/DHS. Among other requirements, that regulation requires railroads including BNSF to report to DHS concerning the (c) "(6) Discharge, discovery, or seizure of a firearm or other deadly weapon on a train, in a station, terminal, facility, or storage yard, or other location used in the operation of the railroad, rail hazardous materials shipper, or rail hazardous materials receiver."

The proposed restrictions on BNSF activities regarding firearms on its property or facilities contained in North Dakota HB 1438 are clearly inconsistent with our federal obligations and would interfere with them. If we receive knowledge of a firearm or other potentially deadly weapon on BNSF property or facilities including parking lots, federal law requires us to report it. Federal law does not permit a railroad to ignore or take no action when such knowledge is received.

To avoid the conflict we strongly recommend that the North Dakota Legislature revise HB 1438 to exempt from the Bill interstate railroads in North Dakota that are subject to federal regulations such as 49 CFR 1580.105.

Thank you for your consideration.

**Bryan Bass, CPP**

BNSF Railway Police | Deputy Chief/Sr. Manager Homeland Security | ☐ Bryan.Bass@BNSF.com | ☎ 817.593-6232  
 | ☎ 817.352.7536 | 6651 Burlington Blvd Fort Worth, TX 76131

*When YOU focus on YOUR ultimate goal, excuses stop being part of YOUR thinking. — Ephren W. Taylor*

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