



North Dakota Retail Association

MAY 2015

Join NDRA in Recognizing State Retailers During Small Business Week

In North Dakota, we know small business retailers fuel innovation, support our communities, and build family legacies. This week marks a national celebration of small businesses during which the NDRA salutes our state's small, mainstreet, and family-owned retailers.

Here are some facts about small retailers from the National Retail Federation:

- A majority of retailers are small businesses. According to the U.S. Census Bureau, 98.6 percent of all retail companies employ fewer than 50 people, and 95 percent operate a single location.
- No other industry has more companies with fewer than 100 employees than retail.

- Small retailers are often family-owned and -operated - some through multiple generations.
- Retailers of all sizes face many of the same issues, but small ones have fewer resources to deal with them, whether it's government mandates or unfair competition.

As Congress marks Small Business Week, it's time to recognize that big things can come from small stores, and to put a stop to public policy that says "no" to the American Dream.

Join us in saluting retailers during Small Business Week May 4-8!



The Expected Chip Card Ramp Up

Soon we will have to change how we pay and get paid with credit and debit cards. The nation is switching to the new standard of operation and a more secure way of paying

called EMV. Already the standard in most of the world, EMV chip card technology is a global initiative to prevent the growth of payment card fraud. The United States is one of the last major markets that has not fully transitioned to EMV and is still using magnetic-stripe-only cards. This is set to change in October 2015.

What is EMV?

EMV chip technology, named after its original developers Europay, MasterCard® and Visa®, is the most recent advancement in a global initiative to combat fraud and protect payment data in the card-present environment. EMV chip cards, also referred to as smart cards, will look just like the credit cards we use now except for the little chip embedded in the card itself. The embedded microchip stores and protects cardholder data and provides an additional level of authenticity for each transaction.

Why are they more secure?

Unlike magnetic stripe cards, chip cards create a unique transaction code every time they're used, making it

virtually impossible to clone. Data on mag-stripe cards never changes. Fraudsters can copy a mag-stripe and produce a duplicate card in about 20 minutes.

How will this affect my business?

You may need to upgrade your point-of-sale equipment to process chip card transactions to minimize the risk of liability from fraudulent transactions.

How am I impacted by the liability shift?

Starting in October 2015, the liability shift associated with EMV is scheduled to take effect in the United States. Currently, the major card brands absorb the costs associated with counterfeit card fraud. After October 2015, the liability shifts to essentially the weakest link in the payments chain. This means that if you do make the switch to EMV-enabled equipment by October 2015, your business **may be held financially liable** for card-present fraud that could have been prevented with the use of chip-enabled technology.

Am I required to support EMV?

Not at this time. However, even if your business hasn't been targeted by fraud in the past, you may be putting yourself at risk in the future as fraud is expected to migrate to the least secure technology (mag-stripe). Therefore, it is recommended that you verify your equipment can support chip transactions by October 2015.



Mike Rud - President

Valued NDRA Members:
ND's 64th Legislative assembly is in the books. The Association office was tracking and monitoring nearly 100 bills throughout the session. Thanks to the help of many of the NDRA members, I'm proud to say the 2015 Session was another strong one for the retail business community in ND. We didn't get every bill through we were working,

but with the downturn in oil prices, any bill with a fiscal note received a lot of scrutiny during the hearing process as legislators tightened the purse strings. Here's a final recap of critical bills:

HB 1012: Is the ND DOT Highway Budget: appropriated just over a billion dollars in road funding.

SB 2103: This is the "surge" bill 1.1 billion dollars for roads and infrastructure in the four major oil producing counties.

(All total, roads and infrastructure received \$2.3 billion in appropriations. These two bills are important because by continuing to build out roads and infrastructure across North Dakota, it makes the state more enticing for potential retail businesses to locate and set up shop. It also lessens worries of potential gas/diesel taxes that can have a negative impact on retail sales. If consumers are paying more in energy costs it means less disposable income for retail purchases.)

HCR 3027: A concurrent resolution urging Congress to increase the federal minimum wage to \$10.10 per hour by 2018. This will surely be a hot topic on the federal level during the 114th Congress. NDRA opposed this legislation. Minimum wage is hardly an issue in the ND retail services industry at this time. **The bill received a 10-4 DNP recommendation out of House IBL and was voted down on the House floor.**

HCR 3049: Workforce was one area NDRA tried to enhance during the session. ND has over 25,000 job opening in the state. A lot of those jobs are in the retail sector. 3049 is a concurrent resolution directing the Legislative Management to study issues related to employment restrictions in public assistance programs. In other words, we are looking into what if anything can be done to get the working force relying on public assistance programs to work more hours and what impact will it have on federal assistance they might be receiving if they do so. We believe there might be as many as 2000 workers in ND that fall into this category. If we could get 20 hours more a week from everyone in this group, we could make 40,000

more work hours available to the business sector. It's a start. **Both chambers consented to the idea.**

HB 1158: Relating to the issuance of game and fish licenses. This bill will allow outdoor enthusiasts to get hunting and fishing licenses on-line. It removes county auditors as the middleman and the State Game and Fish Department in charging of licensing operations. **It passed the full House by a 92-0-2 counts.**

SB 2096: Relating to elimination of sales taxes on sale of internet access services. Engrossed SB 2096, can be expected to reduce sales tax revenues by an estimated \$4.875 million during the 2015-17 biennium. It passed the full senate by a 31-16-1 vote. It was amended in the House and passed 62-24. **It was sent back to the Senate and the bill passed by a 45-2 count.**

SB 2182: Relating to transient merchants, unlawful practices, and home solicitation sales. This bill stirred up a little controversy with several NDRA members. However, the bill sponsor and concerned parties met with the ND Attorney General's Office and all concerns were resolved. It passed the full **Senate by a 47-0 vote. It passed the House by an 88-3 count.**

SB 2208: Relating to retail business leases and agreements and state holidays. This bill had to do with some small businesses not wanting to be open on certain Holidays, but the lease agreement they had in place with the mall owners never gives them that decision making power. The bill passed out of Senate IBL by a 4-3 vote and passed the full Senate by a 27-19 count. **SB 2208 was killed in the by a 66 -22 count.**

SB 2214: Relating to security breach notification. Basically a bill calling for any business which experiences a data breach to contact the North Dakota Attorney General's Office in a timely fashion. It was amended and passed the full Senate by a 45-0-2 vote. Passed 91-2 in the House as amended. **Passed the Senate unanimously amended.**

SB 2223: Relating to a sales and use tax exemption for clothing. I call it an oldie but a goodie, some members in Senate Finance and Tax just call it an oldie. It would have removed the sales tax on clothing in ND. Bill sponsor was Senator George Sinner. Sinner and NDRA spoke in support of the bill. On-line retail sales are starting to impact Main Street ND. Retail sales in some larger ND cities like Fargo and GF have seen in store sales drop more than 5% the last few years. It would have been a \$300 a year tax break to the average ND family as well. We worked it hard on the Senate Floor, but it **failed by a 27-20 vote.** I think under different economic conditions we may have been able to get it through. The fiscal note of \$50 million for the biennium was high given budget constraints.

HB 1004: HB 1004 was the North Dakota Department of Health budget. NDRA became involved in this bill when a

Senate subcommittee brought forward amendments calling for an increase in retail food licenses. NDDH was seeking more inspectors to monitor high risk facilities like nursing homes, schools and daycares. **NDRA vigorously opposed the idea of the retail sector paying for more inspectors to monitor such public operations.** We were able to remove the proposed fee increases from the bill.

SB 2279: The LBGTQ discussion was one of the more controversial debates of the session. The Senate passed the bill in the first half. It was designed to keep business owners from discriminating against employees on the basis of sexual orientation. The most controversial aspect of the bill from a retail standpoint was it essentially created a protected working class for the LBGTQ community. The hearing in the House lasted almost two hours with the bill eventually being **defeated by a 56-35 vote.**

HB 1406: This bill contained language to keep ND in compliance with the Streamline Sales Tax Agreement. It basically was language centered around Papa John's Pizza not being taxed as a prepared food. It was critical language however as it was needed to keep the state in compliance with the SSTI. The bill passed the Senate in the first half. Failed in the House because of some controversial language regarding who should serve on the state's SSTI advisory committee. The needed language was amended in conference committee and placed on HB 1406 a bill dealing with taxes on the Standing Rock reservation. It was taken back upstairs and **passed both chambers by large margins.**

HB 1078, 1186 and 1265: Relating to the sale and use of nicotine devices by minors. All three of these bills dealt with prohibiting the sale of e-cig/vapor products to minors. NDPMA/NDRA supported HB 1186. It was the most comprehensive and farthest reaching bill. This bill prohibits the sale of these products to minors and takes all self-serve tobacco displays off the floor and puts them behind the counter. Both **HB 1078 and HB 1186** passed the full House in the first part of the session. We expected an attempt by the anti-tobacco groups to amend HB 1186 calling for a tax on all e-cig/vapor products. **HB 1078 was defeated and HB 1186 passed the Senate unanimously with no amendments.**

HB 1421: This was the House version calling for a tobacco tax increase. Would have raise tax on a pack of cigarettes to \$1.54/pack, a \$1.10 per pack increase. Very lengthy hear in House Finance and tax. Well attended by marketers and distributors. House Finance and Tax Committee recommended a DNP by 12-2 count. House floor debate lasted an hour. **HB 1421 was defeated by a 56-34-4 vote.**

SB 2322: This bill called for an even larger tax on tobacco. It would have raised the tax on a pack of cigarettes to \$2.00/pack. It too had a very long hearing in Senate Finance and Tax, which voted for a DP recommendation by a 4-3 count. NDPMA and others went to work immediately to flip the committee recommendation on the Senate floor.

The floor debate was lengthy, but our efforts paid off with a **full Senate voting down SB 2322 by a 30-17 count.**

(We had some major wins in the tobacco wars, but larger battles loom in the future as we will likely need to prepare for an initiated measure to raise the state's tobacco taxes. The two tobacco tax bills were not only important to some of our retail business members, but they sent a strong message regarding tax policy in ND: Prohibition by Price and Social Engineering will not resolve health issues. These bills were also the only two tax increases proposed during the first part of the session).

HB 1434: Relating to sales of alcohol on Sunday. This bill will allow the sale of alcohol at all establishments beginning at 11 a.m. on Sunday instead of noon as the law is currently written. It passed the full House. Hit some tough sledding in the Senate. Bill was amended to exclude off-sale shops from selling liquor be 11 on Sunday, but allows restaurants to do so.

HB 1476: HB1476 lowers the state's 6.5 percent oil extraction tax to 5 percent effective Jan. 1, 2016, and raises the threshold for hitting the state's large oil tax trigger after that date. The bill creates an overall 10 percent tax on industry and leaves the state's 5 percent gross production tax untouched. The bill's fiscal note estimates \$35 million in additional revenue during the 2015-17 biennium.

SB 2035: This is a bill relating to a sales tax exemption for tangible personal property used to construct a fertilizer or chemical processing facility. This bill would greatly help the new CHS fertilizer plant being proposed in the Jamestown Energy Park as well as the fertilizer plant being proposed in the GF area. In addition it would go a long way to helping make the proposed propylene plant in the Bakken a doable project. These are similar tax exemption requests to what all the other valued added plants in ND have received in past years. The bill was heavily scrutinized and amended coming out of Senate Finance and Tax. **It passed the full Senate 47-0** and was sent on to the House where it was amended. The bill ended up in conference committee. **It passed both chambers after conference work.**

Here's a brief update on the tax bills as the 64th session wraps up:

SB 2005: Drops property tax by 12%

SB 2349: Reduces Personal Income tax by 10% and Corporate Income Tax 5%

SB 2292: Allows businesses to apportion income based on a single sales factor

If you have any questions regarding any legislative issues, please don't hesitate to contact the NDRA offices. Hope to see you all at the PAC golf outing July 22 at Bully Pulpit Golf Course in Medora.

Best regards,

Mike Rud



Lyle Beckwith

EU could teach US in regulating credit card fees

In the U.S., banks can gouge merchants with impunity on the “swipe” fee merchants pay to process credit-card transactions. On a \$150 grocery-cart’s worth of food, the fee can be as much as \$4.50, while it costs the bank literally pennies to process the transaction.

The banks can manipulate the business because two credit-card companies, Visa and MasterCard, control the vast majority of the market. The two companies each separately exploit this anomaly in our free-market system to fix the fees charged by the banks that issue their cards. The result: American merchants now pay the highest swipe fees in the world.

Antitrust investigations, lawsuits and legislation have yet to break the banks’ stranglehold. When somebody tries, the banks cry that it will destroy the credit system.

Yet clearly the banks can thrive on fees without 1,000-percent profit margins. They do it, just for instance, in Europe, where fees are one-seventh the size American retailers pay.

How is it that the European system is so much more equitable? The U.S. has long lagged other countries in ensuring the fees are fair to merchants and consumers, according to researchers at the Federal Reserve Bank of Kansas City.

The European Parliament, on the other hand, approved a 0.3-percent cap on swipe fees. Members of Parliament also put a seven-Euro-cents cap (around a dime in U.S. currency) on debit card transaction, or 0.2 percent of the transaction value, whichever is lower.

European Union regulators and Parliament have worked hard for years to understand and solve the problems created by this huge fee most people in Europe and America have never even heard of.

The European Commission, the executive branch of the European Union, wrote the legislation to protect consumers

who, the commission said, wound up unknowingly paying the higher fees (just as American consumers do.)

The commission estimates the caps will cut European swipe fees in half when the law becomes final after the 28 European Union countries ratify it.

Because in the U.S. Visa and MasterCard still secretly fix swipe fees without competing, the fees have tripled in the past decade. Swipe fees have metastasized to become for many Main Street merchants their second-highest operating cost after labor and before rent and utilities, choking hiring and expansion and adding to consumer costs.

Reform, on the other hand, helps merchants and consumers. Consider debit-card swipe fee reform. Congress passed reform in 2010. Even though the Federal Reserve bowed to bank lobbying and inflated the fee limits beyond Congress’ intent, a study by economist Robert Shapiro estimated consumers saved almost \$6 billion in the first year of reform and those savings supported more than 37,000 jobs.

Contrary to the banks’ dire claims, free checking accounts actually increased after debit fee reform, according to no less an authority than the Kansas City Federal Reserve. Banks’ objections to reform all proved to be false in the end.

And we need credit fee reform here in the U.S. We should take a long, hard look and learn from the examples of the European Union, of Australia, of Canada – of most other countries that consider it vital to keep their crucial retail economies healthy and protect consumers. We need to find a way to bring these fees into the open and foster competition rather than allowing price-fixing by two dominant card companies.

The alternative is to continue to let the banks prosper at the expense of consumers and our economy. And that simply doesn’t make sense – not in Europe, and not here in the U.S.

Beckwith is senior vice president of Government Relations with the National Association of Convenience Stores.

Congress Takes Important Step on Data Breach Notification Legislation



The National Retail Federation issued the following statement from

Senior Vice President and General Counsel Mallory Duncan on the House Energy and Commerce Committee’s consideration of the Data Security and Breach Notification Act:

“We need strong tools to combat criminal data breaches. Throughout this process, it has been our goal to work toward legislation that advances and strengthens consumer protections and incentivizes businesses to safeguard sensitive data. NRF commends the committee leadership and bill sponsors for their dedicated efforts to reach these important goals.

“In order to be successful, data breach legislation must secure a single national standard and match any penalties to obligations so as avoid adverse effects on small and medium-sized businesses attempting to deal with the scourge of criminal hacks.

“Legislation must ensure public notice of breaches so consumers are promptly and effectively informed and businesses understand and appreciate the consequences of failing to adequately guard sensitive information. Today’s draft makes important steps in that direction.”

www.nrf.com



April 24, 2015

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte:

We appreciate this opportunity to offer comments on behalf of the National Retail Federation (NRF) on your April 15 Discussion Draft of the "Online Sales Simplification Act of 2015." Most importantly, this recent draft recognizes the retail industry's need for legislation that provides parity at the point of sale with respect to sales tax collection, which is a significant improvement over the previous discussion draft. Nonetheless, we are concerned that the cumbersome mechanism in the draft legislation for being able to achieve parity with respect to sales tax collection may effectively prevent the ability to achieve this result. We continue to believe that a prompt federal legislative solution to this issue is needed to protect Main Street Retailers from being subjected to higher taxes than their competitors, and to avoid the complication and uncertainty inherent in state-by-state legislative solutions and/or judicial solutions.

NRF is a member of the Marketplace Fairness Coalition and associates itself with questions submitted by that Coalition to help us better understand the discussion draft. One of the most important issues raised in those questions is why there is a two-year delay from the effective date for the Distribution Agreement until an Ancillary Compact may become effective. It seems to us that the only way to achieve parity on sales tax collections is if states join in an Ancillary Compact, but we are concerned that will not occur if there is a two-year delay in the effective date. NRF is also concerned with the difficult and cumbersome rules inherent in producing the Distribution Agreement and having it approved by a majority of the States, which is essential to authorizing collection of sales taxes on remote sales.

We look forward to the opportunity to work with you on legislation that can be enacted this year to eliminate the current sales tax pricing disadvantage faced by Main Street retailers.

Sincerely,

David French
Senior Vice President
Government Relations

February 13, 2015

The Honorable Heidi Heitkamp
502 Hart Senate Office Building
Washington, DC 20515

Dear Senator Heitkamp,

Since 1965, the North Dakota Retail Association has represented the interests of individual merchants and advocated for policies that support the retail industry. We represent all types of merchants that sell a wide variety of goods, from “Mom and Pop” stores to multi-state chains, and on behalf of the retailers we represent, I ask that you co-sponsor and work to pass needed modernizations to the Toxic Substances Control Act (TSCA).

Current federal chemical statutes do not reflect advancements in science and technology and are ineffective in both preventing the import of toxic chemicals in products and the use of toxic chemicals domestically – asbestos being a primary example. This places an added burden on retailers to ensure the safety of the products they are selling, a time-consuming and costly endeavor, particularly for small retailers.

A modernized TSCA would provide consumers, retailers, and industry with greater confidence in federal chemical management and remove the pressure on retailers to make decisions without scientific justification that distort the market and divert resources from innovation and growth.

The Chemical Safety Improvement Act (CSIA) will change how chemicals are evaluated and classified by requiring the EPA to evaluate all chemicals in current commercial use and labeling them as “high” or “low” priority based on their potential environmental and health risks. This is a drastic shift from the TSCA, which grandfathered in 62,000 chemicals without the need for any evaluation by the EPA.

EPA will be placing greater scrutiny on the chemicals that may actually be harmful while streamlining the approval path for those that are safe. It would also implement a process for the review of new chemicals and would give the EPA the authority to prohibit those that are unsafe from entering the market.

The CSAI would make Americans safer while helping to grow our economy. The North Dakota Retail Association therefore urges you to support this much-needed legislation.

Sincerely,

Mike Rud
NDRA President

Jeffrey Hinz
NDRA Chairman



David French
Government Relations
National Retail Federation

5 Big Policy Debates Affecting Small Business Right Now

It may not be an essential element in a business plan, but it's important to remember that being an advocate for retail and a small business owner are indistinguishable — your stories have a big impact on decisions being made on Capitol Hill, and ultimately, your company's bottom line. There are several issues developing in Congress right now that could significantly affect small retailers.

SALES TAX FAIRNESS

This issue is one that needs no introduction for independent retailers. House Judiciary Chairman Bob Goodlatte, R-Va., has shown a willingness to work toward getting something done this year and strong support remains among the Senate sponsors of the Marketplace Fairness Act. Leveling the playing field for all retailers with a federal law will help bolster local economies and support job growth. Even U.S. Supreme Court Justice Kennedy weighed in on this issue recently, saying that the court might have to find a way to fix this situation.

OVERTIME

The Department of Labor is drafting new regulations about overtime that could threaten small retailers by expanding the number of employees covered by overtime. One backbreaking part of the change would require salaried employees that are exempt from overtime regulations to meet rigid time requirements for doing managerial duties, which could prevent them from jumping in to help customers when needed. Not only could it discourage retailers from offering overtime, but this kind of regulation just doesn't make sense when you consider the multitasking nature of retail manager roles — especially in a small business.

FAIR PATENT LAWS

The issue with the most descriptive name is also one of the most exasperating for retailers. "Trolls" are firms that buy up old, vague patents and then threaten companies with lawsuits unless they pay a licensing fee. Most of these claims don't hold

up in court, but patent trolls are kept in business by an extortion model that results in many companies choosing to pay a licensing fee rather than deal with a long legal battle. For a small business with no litigators on the payroll, these lawsuits can be especially damaging. Congress needs to act now to enact fair patent laws and help reduce frivolous claims that hurt small businesses.

DATA SECURITY

Protecting customer relationships and personal data is a top priority for any business, but as cyber criminals grow increasingly sophisticated, the task becomes more challenging, especially for an independent retailer. NRF calls for a multi-tiered, multi-industry approach that includes financial, retail and government institutions. Congress is already working on legislation aimed at protecting consumers. Small businesses should be wary of some proposed legislation that would slap unreasonably large fines — as large as \$9 million — on retailers that have been breached. Such large fines certainly send a strong message; but since most data breaches are the direct result of a criminal act by a hacker, we question whether it is fair to slap fines on a business in the first instance when a retailer may have followed all appropriate procedures to protect their customers' data.

TRADE

Trade is important to the retail industry, and free trade agreements are an issue for retailers of all sizes. In 2013, imports and exports supported nearly 6.9 million U.S. retail and restaurant jobs. Free and open markets, through free trade agreements and preference programs, enable retailers of all sizes to obtain the high quality goods their consumers want at lower prices, which in turn stimulates economic growth in the form of savings passed on to customers. These same trade agreements help break down barriers to foreign markets allowing U.S. retailers to sell U.S. goods abroad by opening stores or reducing barriers to digital commerce. NRF is working to support trade legislation that will help retailers get the goods customers want, wherever they may be, at reasonable and competitive prices.

4th Quarter Taxable Sales and Purchases Increase by 15.5%

Tax Commissioner Ryan Rauschenberger announced that North Dakota's taxable sales and purchases for the fourth quarter of 2014 had a noticeable increase. Taxable sales and purchases for October, November and December of 2014 were \$7.822 billion, a 15.5% increase over those months in 2013.

"It is remarkable that we continue to see growth on this level," stated Rauschenberger. "Such strong growth is all the more remarkable when you consider that oil prices had already begun a significant decline during the fourth quarter of 2014."

North Dakota oil prices were 27% lower during the fourth quarter of 2014 than during the fourth quarter of 2013.

Thirteen of the 15 major sectors reported taxable sales and purchases gains when compared to the fourth quarter a year ago. Most notably,

the mining and oil extraction sector increased by \$409.4 million (a 37.69% increase), the wholesale trade sector increased by \$300.9 million (a 17.27% increase), and the retail trade sector increased by \$84.6 million (a 4.59% increase).

"Consumer confidence is often measured by looking at the change in retail trade sector taxable sales and purchases," Rauschenberger said. "Retail during the fourth quarter, which includes the holiday shopping season, saw more than a 4 percent increase over fourth quarter last year."

The complete fourth quarter 2014 North Dakota Sales and Use Tax Statistical Report can be accessed below:

[2014 Fourth Quarter Sales and Use Statistical Report](#)

North Dakota Retail Association



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Mike Rud, President

Mary Nagel, Executive Administrator

► EMPLOYERS

Form W-9 was revised in December 2014

Form W-9, Request for Taxpayer Identification Number (TIN) and Certification

Use this form to provide your correct TIN to the person who is required to file an information return with the IRS to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

See also: [Clarification for Form W-9, Request for Taxpayer Identification Number and Certification](#) and [Instructions for the Requester of Form W-9](#)

The [Spring 2015 issue](#) of the IRS/SSA Report is now available. The SSA/IRS Reporter is a quarterly, online-only publication for businesses, payroll professionals and others who deal with payroll taxes and employee issues.



NDRA / NDPMA Board Meeting

July 21, 2015

Medora

PAC Golf Scramble

July 22, 2015

Bully Pulpit - Medora

[Registration Sheet](#)

Petroleum Expo

October 27 & 28, 2015

Ramada Plaza Suites - Fargo