

2021 HOUSE JUDICIARY

HB 1208

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1208

1/27/2021

Relating to civil penalty and injunctive enforcement; and to provide a penalty

Chairman Klemin called the hearing to order at 8:30 AM.

Present: Representatives Klemin, Karls, Becker, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom. Absent Rep. Buffalo and Rep. Vetter

Discussion Topics:

- Changes to antitrust laws
- Consumer fraud statute of limitations extension

Parrell Grossman, Attorney General's office; Consumer Protection: Testimony #3611
8:30

Chairman Klemin closed the hearing at 8:47.

Rep. Satrom : Moved a Do Pass. Rep. Roers Jones seconded.

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	A
Rep Buffalo	A
Rep K. Hanson	Y

Motion carried 12-0-2 Carrier: Rep. Roers Jones

Additional written testimony: 3634, 3463.

Chairman Klemin closed the meeting at 8:50.

DeLores D. Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1208: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1208 was placed on the Eleventh order on the calendar.

HOUSE JUDICIARY COMMITTEE
LAWRENCE R. KLEMIN, CHAIRMAN
JANUARY 27, 2021

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION & ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
RE: HOUSE BILL NO. 1208

Mr. Chairman and members of the House Judiciary Committee. I am Parrell Grossman, and it is my privilege to serve as the Director of the Attorney General's Consumer Protection Division. I appear on behalf of Attorney General Wayne Stenehjem in support of House Bill No. 1208.

I first want to note that due to a communication error on my part, two additional co-sponsors were inadvertently omitted as sponsors on this legislation. Representatives Pamela Anderson and George Keiser had confirmed with me that they wanted to be co-sponsors of this legislation and I failed to get this information to Chairman Klemin early enough for these two legislators to be included as additional sponsors. My oversight was unfortunate. Nonetheless, these potential co-sponsors were enthusiastic in their support of this Bill and I respectfully request that this Committee take note of their intent to co-sponsor this Bill.

The Attorney General is proposing HB1208 to make some long overdue changes to existing antitrust laws, including civil penalties and the ability to recover individual damages on behalf of North Dakota consumers. Also, for consumer fraud, we would like to extend the statute of limitations from two to four years to allow more time to discover or investigate fraudulent conduct and obtain restitution for consumers.

We believe it is time to increase ND's antitrust civil penalties from \$50,000 per violation to \$100,000 per violation. Civil penalties are \$1M in AK, FL, IL, NY and VT; \$500,000 in NE, UT, and VT; \$250,000 in AZ, CT, and OR; \$150,000 in IA; and \$100,000 in VA, WV, and WI.

The landscape in antitrust and anti-competitive conduct has dramatically changed over the years and this is about North Dakota having penalties more commensurate with illegal anticompetitive conduct that directly harms consumers' pocketbooks or limits their choices in the marketplace. As an example, you probably are aware the Attorney General and State of North Dakota are part of three multistate antitrust cases against Big Tech companies, although the type of entity matters less than the nature of illegal conduct. A \$50,000 civil penalty for one of these entities is nothing and certainly is not any deterrent to illegal conduct.

Additionally, North Dakota is part of a huge generic drug multistate case involving many different cases, drugs and participants. The states believe it is a strong price fixing case with a scheme dividing up markets and drug pricing between many companies and participants to keep all participants very profitable. It completely stifled competition and engendered higher prices for consumers, many who likely made difficult choices between drugs and other necessities. This case has been ongoing for several years and will continue to do so for many more years, and increased civil penalties in cases like this one should be an option for the Court and State of North Dakota.

Increasing these civil penalties will not impact any small businesses in North Dakota. Furthermore, these penalties would be the maximum amount and are always subject to the Court's discretion. The Attorney General typically is unlikely to ask for the maximum amount. Nonetheless, the possibility for higher penalties provides a stronger disincentive for illegal conduct.

Section 2 of the Bill proposes a very important change. It provides *parens patrie* authority for the Attorney General to recover damages sustained by North Dakota consumers as a result of antitrust violations. Most states already have specific statutory authority to recover for individual consumers, and some do not. There are approximately 30 states that have this authority, with most by statute and a few by judicial or case law authority. This authority will significantly matter for harmful anticompetitive conduct in the future, when it comes to obtaining damages or refunds for North Dakota consumers in a variety of purchases or matters. Arguably, damages that do not go to North Dakota consumers are available for consumers in other states.

Section 3 of the Bill contains proposed changes regarding North Dakota's statute of limitations (SOL) for consumer fraud. Our SOL for consumer fraud arguably is 2 years, as a "penalty or forfeiture." This limited two-year period is insufficient for fraudulent conduct. It is not enough to discover or investigate complicated violations. We do not want to rush these decisions or bring an action that might have been concluded at the investigation stage without further action. Typically, in multistate investigations and legal actions, targets are willing to enter into tolling agreements that protect states during the investigation that might lose claims because the two-year time period will run while the matter is being investigated. Sometimes, knowing the two-year SOL in North Dakota, these targets are unwilling to enter into such tolling agreements with North Dakota. It can place the Attorney General in the position of dropping out of the case or suing immediately and going it alone without sharing resources with other states. Health fraud cases related to the effects of drugs are a prime example of some limited cases or instances in which North Dakota was precluded from or passed on a multistate resolution because the misrepresentations on the drug effects occurred prior to the two years and the representations were not established as false until years later.

It is not unusual to discover fraudulent conduct near the expiration of two years, with no time to conduct a fair or appropriate investigation in order to assess whether or not to bring legal action. We certainly do not want to initiate legal actions if an investigation would not support any further action. Also, we have investigations where the defendant intentionally hides or fails to disclose other transactions and victims that we later discover from another source only after we actually file an action, finding those victims or transactions are now outside the two years. It is arbitrary to exclude other victims that, for instance, lost \$10,000 to \$50,000 or more, two years and six months earlier, and it is very difficult to explain to those victims.

These cases involve fraudulent and deceitful conduct, not breach of contract, and are more deserving of an extended SOL. Something greater than two years is reasonable and appropriate. Many states have 2 years and other states have 3 to 6 years. In Iowa, consumer fraud apparently is so frowned upon that Iowa has no SOL for consumer fraud. The Attorney General is recommending extending our SOL to 4 years.

The Attorney General respectfully requests that House Judiciary give this Bill a “Do Pass” recommendation.

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



Contact:
Matt Perdue, Lobbyist
mperdue@ndfu.org | 701.641.3303

**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
House Judiciary Committee on HB 1208
January 27, 2021**

Mr. Chairman and members of the committee,

Thank you for the opportunity to provide testimony on House Bill No. 1208. My name is Matt Perdue, and I write on behalf of North Dakota Farmers Union's (NDFU) members.

NDFU supports HB 1208, because it strengthens the attorney general's authority under the state antitrust act. Providing the attorney general with more tools to enforce antitrust laws will better protect family farmers and ranchers.

Granting the attorney general *parens patriae* authority will allow him to file suit on behalf of North Dakota citizens and to recover damages for those individuals. Under current law, the attorney general may file or join antitrust litigation. However, he is limited in his ability to collect damages for North Dakotans impacted by anticompetitive practices. This could ultimately prevent a North Dakota citizen from being compensated when a court rules that an anticompetitive action has caused them harm.

HB 1208 is particularly important for family farmers and ranchers who are uniquely vulnerable to anticompetitive practices. Nearly all of the industries that farmers and ranchers buy from and sell to are highly consolidated. For example, the four largest firms control 76% of the soybean seed industry, 85% of the corn seed industry¹ and 85% of steer and heifer slaughter². Such high levels of consolidation weaken competition in an industry and make abuses far more likely.

In the last few months, we've seen several examples of potential anticompetitive conduct impacting farmers and ranchers. The onset of the coronavirus caused live cattle prices to plummet while boxed beef prices skyrocketed, devastating ranchers' pocketbooks and prompting a federal investigation. While there has not been successful litigation stemming from allegations of price fixing in the beef industry, the nation's two largest chicken companies were recently forced to pay \$185.5 million for depressing prices.

The unprecedented levels of consolidation farmers and ranchers face warrants strong enforcement authority at all levels of government. We believe the attorney general should be granted *parens patriae* authority, so he can better serve North Dakotans who are harmed by anticompetitive practices.

We support HB 1208 as written and urge a do pass. Thank you for your consideration.

¹James M. MacDonald, "Mergers and Competition in Seed and Agricultural Chemical Markets," *Amber Waves*, April 3, 2017, <https://www.ers.usda.gov/amber-waves/2017/april/mergers-and-competition-in-seed-and-agricultural-chemical-markets>.

² United States Department of Agriculture Grain Inspection, Packers and Stockyards Administration, "Packers and Stockyards Program 2016 Annual Report," https://www.gipsa.usda.gov/psp/publication/ar/2016_psp_annual_report.pdf.



Senate Human Services Committee

IN SUPPORT-HB 1208

January 27, 2021

Janelle Moos, AARP North Dakota

jmoos@aarp.org – (701) 355-3641

Chairman Klemin and Members of the House Judiciary Committee-

My name is Janelle Moos, Associate State Director for Advocacy with AARP North Dakota. We are here to provide support for HB 1208. Some of the most heartbreaking calls AARP receives are from people who fear that they or their parents have been scammed.

Recognizing the growing threat from telephone and internet fraud, AARP set up the Fraud Watch Network in 2013. The response has been overwhelming. In 2019 alone, AARP experts fielded tens of thousands of calls from people seeking advice from the [Fraud Watch Network helpline](#). And the network has reached out to consumers in many other ways, such as with a fully updated fraud resource and information center on the AARP website. It has also established critical links to federal and state law enforcement organizations, to make sure it is giving people the most up-to-date information.

And while fraud and scams are always a concern, coronavirus scams are spreading nearly as fast as the virus itself. As of Jan. 12, 2021, the Federal Trade Commission (FTC) had logged more than 324,000 consumer complaints related to [COVID-19](#) and [stimulus payments](#), 69 percent of them involving fraud or [identity theft](#). Victims have reported losing \$307 million, with a median loss of \$305. Fraudsters follow the headlines, taking advantage when an outbreak like coronavirus, Ebola or swine flu makes global news.

Fraudsters are using the full suite of scam tools — [phishing](#) emails and texts, bogus social media posts, [robocalls](#), [impostor schemes](#) and more — and closely following the headlines, adapting their messages and tactics as new medical and economic issues arise. Testifying on COVID-19 fraud at a June 2020 Senate hearing, a high-ranking FBI official said that "the current atmosphere of fear and urgency aids criminals in taking advantage of the American public, particularly at-risk populations like older adults and people with underlying health conditions."

Along with peddling snake oil, scammers might offer actual medications without a prescription, or impersonate national and international agencies such the IRS, Social Security Administration, Centers for Disease Control and Prevention (CDC) and the World Health Organization (WHO) in [phishing emails](#) designed to get your personal data.

What makes this population vulnerable? They're good targets. Many live alone, making them vulnerable. They're more trusting and can have trouble spotting scams.

HB 1208 makes two important changes to the current law that we believe would strengthen enforcement of anti-fraud measures, especially since older adults depend on robust attorney general protection including:

- Section 2 provides *parens patriae* authority for the Attorney General to recover damages sustained by North Dakota consumers as a result of violations
- Section 3 proposes a change to North Dakota's statute of limitations (SOL) for consumer fraud

AARP supports reasonable protections against fraud, identity theft and other scams that target vulnerable people and therefore urge your support of HB 1208.

Thank you.

2021 SENATE JUDICIARY

HB 1208

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1208
3/9/2021

A BILL for an Act to create and enact a new subsection to section 51-08.1-08 and section 51-15-12 of the North Dakota Century Code, relating to damages, injunctive relief, and limitation of actions; to amend and reenact section 51-08.1-07 of the North Dakota Century Code, relating to civil penalty and injunctive enforcement; and to provide a penalty

Chair Larson, called Hearing to order, all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.** [02:31]

Discussion Topics:

- Extending statute of limitations and increasing penalties
- Attorney General authority re: anticompetitive harmful actions
- Enforcement of anti-fraud measures

Parrell D Grossman, [02:31] Assistant Attorney General Consumer Protection & Antitrust Division, testifies in favor #7845

Janelle Moos, [2:56] Associate State Director-Advocacy testifies in favor #7924

Senator Luick [3:02] moved amendment
LC 21.0705.01001 on HB 1208

Senator Myrdal [3:02] seconded the motion Roll
call Vote, motion passed on HB 1208 as
amended 7-0-0, [3:04]

Senators	Vote
Senator Janne Myrdal	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Diane Larson	Y

Senator Dwyer [3:04] moved to DO PASS
AS AMENDED

Senator Bakke [3:04] seconded the motion Roll
call Vote, motion passed on HB 1208, 7-0-0,
[3:07]

Senator Dwyer [3:05] will carry

Senators	Vote
Senator Janne Myrdal	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Diane Larson	Y

Additional Testimony:

Matt Perdue, Government relations direction, ND Farmers Union testifies in favor #8185

Hearing adjourned [3:05]

Jamal Omar, Committee Clerk

March 9, 2021

1501
4/6/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1208

Page 1, line 4, remove the second "and"

Page 1, line 4, after "penalty" insert "; and to declare an emergency"

Page 2, after line 2, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1208: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1208 was placed on the Sixth order on the calendar.

Page 1, line 4, remove the second "and"

Page 1, line 4, after "penalty" insert "; and to declare an emergency"

Page 2, after line 2, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

SENATE JUDICIARY COMMITTEE
DIANE LARSON, CHAIRWOMAN
MARCH 9, 2021

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION & ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
RE: HOUSE BILL NO. 1208

Madam Chairwoman and members of the Senate Judiciary Committee. I am Parrell Grossman, and it is my privilege to serve as the Director of the Attorney General's Consumer Protection Division. I appear on behalf of Attorney General Wayne Stenehjem in support of House Bill No. 1208.

Thank you Senator Dwyer for co-sponsoring this legislation. I also want to note that due to a communication error on my part, two additional co-sponsors were inadvertently omitted as co-sponsors on this legislation. Representatives Pamela Anderson and George Keiser had confirmed with me that they wanted to be co-sponsors of this legislation and I failed to get this information to Chairman Klemin early enough for these two legislators to be included as additional sponsors. My oversight was unfortunate. Nonetheless, these potential co-sponsors were enthusiastic in their support of this Bill and I respectfully request that this Committee take note of their intent to co-sponsor this Bill.

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Additionally, North Dakota is part of a huge generic drug multistate case involving many different cases, drugs and participants. The states believe it is a strong price fixing case with a scheme dividing up markets and drug pricing between many companies and participants to keep all participants very profitable. It completely stifled competition and engendered higher prices for consumers, many who likely made difficult choices between drugs and other necessities. This case has been ongoing for several years and will continue to do so for many more years, and increased civil penalties in cases like this one should be an option for the Court and State of North Dakota.

Increasing these civil penalties will not impact any small businesses in North Dakota. Furthermore, these penalties would be the maximum amount and are always subject to the Court's discretion. The Attorney General typically is unlikely to ask for the maximum amount. Nonetheless, the possibility for higher penalties provides a stronger disincentive for illegal conduct.

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resolution because the misrepresentations on the drug effects occurred prior to the two years and the representations were not established as false until years later.

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These cases involve fraudulent and deceitful conduct, not breach of contract, and are more deserving of an extended SOL. Something greater than two years is reasonable and appropriate. Many states have 2 years and other states have 3 to 6 years. In Iowa, consumer fraud apparently is so frowned upon that Iowa has no SOL for consumer fraud. The Attorney General is recommending extending our SOL to 4 years.

This legislation was passed by the House with 92 Yeas and 2 Nays.

The Attorney General respectfully requests that Senate Judiciary give this Bill a “Do Pass” recommendation.

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



Senate Judiciary Committee

IN SUPPORT-HB 1208

March 9, 2021

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Thank you.



Contact:
Matt Perdue, Lobbyist
mperdue@ndfu.org | 701.641.3303

**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
Senate Judiciary Committee on HB 1208
March 9, 2021**

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² United States Department of Agriculture Grain Inspection, Packers and Stockyards Administration, "Packers and Stockyards Program 2016 Annual Report," https://www.gipsa.usda.gov/psp/publication/ar/2016_psp_annual_report.pdf.