



SDBA Legislative Update

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Legislative News

The number of filed bills continues to grow with a total of 219 introduced so far. I am closely tracking 16 of those bills and have at least a passing interest in a like number of others. Specific news of the week follows.

HB1043 – Updates the state bank franchise tax code reference passed the House this week with no dissenting votes. Now it moves to the Senate.

SB 1,2 & 3 & SJR11– Last week I informed you that the SDBA has taken an interest in a series of bills dealing with various facets of our state's initiative and referendum process which have been introduced on behalf of the Constitutional Revision Commission. Our interest largely stems from the fact that banks contributed heavily toward the defeat of proposed Amendment E (J.A.I.L. for Judges) during 2006. On Friday, the Senate State Affairs committee held its initial hearing on four bills and 11 potential constitutional amendments of which one, SJR11, deals with the initiative and referendum process. That the legislature would even consider tinkering with the laws governing the rights of the citizens' referendum or initiative process elicits strong reaction from people who zealously guard those rights. The SDBA intends to participate in this discussion as a part of a larger coalition of groups interested in proposing very limited changes to the process of gathering signatures on petitions, focusing particularly on changes as they relate to proposed changes in our state constitution.

SB23 – This bill, introduced on behalf of the state Public Utilities Commission, syncs South Dakota's statewide do-not-call statutes with the federal do-not-call statutes administered by the FCC and FTC. State laws are preempted by the federal law unless the provisions of state law are stricter. South Dakota's do-not-call law, enacted in 2003, contained a specific exception to the general definition of an "unsolicited telephone call" for calls made to set a time for a follow-up appointment to transact some type of business with a prospective customer. An example of that type of call in the banking world might be where a personal banker makes a cold follow-up call to a non-customer who received a mailing where a bank is promoting some type of deposit or loan special product. Because federal law doesn't have that type of an exception, our exception is

thereby pre-empted by federal law. Here is what this change means for bank promotional calling programs. Because an exception to the general prohibition on unsolicited calls still exists for existing customers, banks can still call their own customers with regard to certain types of promotions. In fact, a promotional call can be made to a former customer, if an established business relationship existed within the 18 months immediately preceding the call. But if you intend to make calls to non-customers, you will have to check to make sure that the potential customer has not placed their name on the do-not-call registry. On Jan. 17, SB23 passed the full Senate on a vote of 33-1.

SB40 –As noted last week, the SDBA took no official position on this bill which proposed changes to the distribution formula for bank franchise tax paid on net income generated by credit card servicing activities. The bill was referred back to the Senate Taxation Committee and on Friday, based on fiscal concerns expressed by local government interests, the bill was gently laid to rest.

SB44 – This bill is brought by the Division of Banking to authorize the division to conduct background checks on division personnel. This bill simply codifies existing business practice for the division. For BSA compliance exam purposes, FINCEN requires background checks for Division of Banking personnel. On Jan. 18, the bill passed out of the Senate Commerce Committee by a vote of 6-1.

SB45 – This bill also is brought by the Division of Banking. It proposes the repeal of SDCL Title 52, which governs state-chartered savings and loan associations. The language is outdated and totally unused. On Jan. 18, the bill passed out of the Senate Commerce Committee on a unanimous vote and was placed on the Senate's consent calendar. This means that if no member objects, the bill will unanimously pass out of the Senate without further debate.

SB47 – This bill is brought by the Division of Insurance seeking to prevent illegal multiple employer welfare arrangements (MEWAs) and other illegal health insurance activities in South Dakota. MEWAs are group health arrangements similar to that currently offered to SDBA member banks by the SDBA in cooperation with Wellmark Blue Cross/Blue Shield of South Dakota. Our

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plan is legal. Some similar plans offered by an unlicensed, non-resident MEWA may be illegal under SB47. This bill is slated for its initial hearing in the Senate Commerce Committee on Tuesday, Jan. 23. The SDBA will closely monitor this legislation.

SB72 – This bill comes from the car towing and storage industry. SB119 from the 2003 Legislative Session set a \$500 limit on a possessory lien placed by someone who has incurred costs for towing and storing a vehicle. Proponents of SB72 argue that the \$500 limit was meant only to apply to the contents of a towed and stored vehicle, not to the vehicle itself and have introduced this legislation to clear up any confusion. Under SDCL 32-30-18.1, owners of intentionally abandoned vehicles are civilly liable to a possessor for towing and storage costs. So some debate exists as to whether those same companies really need to have the right to place a possessory lien on the vehicle. The bill had its first hearing on Jan. 18 in the Senate Transportation Committee. Interested parties agreed to meeting with the bill's prime sponsor, Sen. Bill Napoli (R- Rapid City) to work out their differences. So long as no attempt is made to give any of the interested parties a priority lien ahead of an existing creditor, the SDBA will not take a position on this bill.

SB77 – This bill is being brought on behalf of some trust practitioners who have found the need to clarify state law governing the rights of judgment creditors with regard to claims made against a partner's interests in a limited liability partnership (LLP). Under the terms of this bill, judgment creditors would be specifically limited to charging the partner's interest and would have no other remedy, including foreclosure on the general or limited partner's interest. Since this bill has no effect on a secured creditor's interest, the SDBA has no position on SB77, but will closely monitor any changes. The bill is slated for its first hearing on Monday, Jan. 22, in the Senate Judiciary Committee.

SB78 – Similar in concept to SB77, this bill proposes to limit the rights of a judgment creditor with regard to claims made against a member of a limited liability company (LLC). Once again, certain trusts which might otherwise choose to organize as a LLC under South Dakota law are reluctant to do so absent the changes proposed in SB78. This bill is also slated to be heard on Jan. 22 in the Senate Judiciary Committee.

SB80 – This bill proposes to increase the allowable amount which a retail merchant may charge for a returned check from \$30 to \$40. The SDBA will monitor this legislation.

SB85 – This bill, brought forward by the State Bar of South Dakota, proposes to replace our current version of the General Provisions of the Uniform Commercial Code (UCC Article 1) with the 2001 version as adopted by the Uniform Commission on State Laws. To date, the proposed law has been enacted in 23 states. SB85 has been referred to the Senate Judiciary Committee, but has not yet been scheduled for its first hearing. The SDBA will carefully follow its progress during this legislative session.

Once again, please mark your calendars for Feb. 7, 2007, and make plans to come to Pierre for our annual State Legislative Conference, Reception and Dinner. Visit www.sdba.com for more information. As always, please call me if you have any needs or concerns. The SDBA office number is (605) 224-1653 and my cell number is (605) 280-7985.