



SDBA Legislative Update

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Legislative News

If you've ever watched a snake's captured prey move through its digestive system, the scene is not unlike watching bills move through the legislative process. Because next Tuesday, Jan. 30, marks the deadline for individual legislators to introduce bills, the bill introduction pace definitely picked up steam the last two days. By noon today, 429 had been introduced. Tom, Neil and I have been scrambling to make sure that we ferret out the ones about which the banking industry would have an interest. Here's my update on both new and old.

HB1043 – This bill updates the state bank franchise tax code reference. It passed the Senate yesterday and will go to the Governor's desk for his certain signature.

HB1111 - As part of an ongoing effort to bring local government into the electronic age, this bill adds the general terms "electronic payment and electronic transactions" to the existing list of credit and debit cards as means by which local government entities can either make or receive payments. An amendment was offered in the House Local Government Committee to make sure that no governing body can **mandate** that a recipient accept electronic payment. I found this a bit interesting given the current push by the Social Security Administration to get Baby Boomers to accept electronic payment of benefits upon their retirement. This looks like further evidence that we South Dakotans are an independent breed.

HB1114 – This bill simply states that any post-secondary technical institute may operate certain business enterprises to sell food, books, computers and the like. What caught my attention was that HB1114 permits the school to finance those computer sales. Apparently, Western Dakota Technical Institute has had a computer lease-to-own program in place for its students for some time. Some years, the school makes a small profit through its operation. In a recent audit, the State Auditor General cited the school for not having legal authority to run any type of a for-profit business. I will track this bill to make sure that it stays narrow in scope.

HB1119 – Current law requires holders of materialmen's or mechanics' liens to take legal action to

enforce the lien within 30 days or the lien is forfeited. This bill directs the register of deeds to cancel the lien if the property owner can prove that such legal action has not been commenced, thereby clearing title to said property. Yesterday, HB1119 passed the House by a unanimous vote.

HB1129 – This bill creates a process by which a cooperative could convert itself into a business corporation. Cooperatives can engage in any lawful business except banking and insurance. I will be talking to the sponsors of this bill to ascertain the reason for its introduction. The bill is slated for its first hearing next Monday in the House Commerce Committee. I will follow its progress closely.

HB1137 – This bill attempts to tighten the payday lending business practice by mandating a three-day, cooling-off period between the payoff of one payday loan and the issuance of another by the same lender. No mention is made of imposing any interest rate or fee cap. No hearing has been set.

HB1151 – This bill is being brought by coin collectors who would like to exempt the sale of coins, currency or bullion from the state sales tax. No hearing has been set.

HB1163 – Brought by the car auction businesses, the intent of this bill is to allow the sale of a repossessed vehicle at auction even if the vehicle title has not been officially transferred from the previous owner to the repossessing entity. It appears this bill may need an amendment to accomplish the sponsor's intent. The bill is slated for its first hearing on Jan. 30 in the House Transportation Committee.

HB1172 – In another attempt to limit terms of payday loans, this bill attempts to further enforce legislative intent that a payday lender cannot, under any circumstance, loan more than \$500 to any individual borrower at any point in time.

HB1203 – This bill prohibits a creditor from garnishing the earnings of a judgment debtor if the judgment is more than 10 years old unless the creditor has made at least one bona fide, good faith attempt to collect the judgment by some other means other than garnishment during the preceding six-month period.

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SB23 – This bill to sync South Dakota’s statewide do-not-call statutes with the federal do-not-call statutes administered is poised for final passage by the House of Representatives. Businesses who engage in calling programs to anyone outside of their existing customer base will need to check the state’s do-not-call registry prior to making any type of solicitation calls. The bill passed the House Commerce Committee by a unanimous vote and will be up for final consideration on the House floor today.

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 plan is legal. Some similar plans offered by an unlicensed, non-resident MEWA may be illegal under SB47. The SDBA and others in the insurance industry have already expressed practical concerns with regard to policing and enforcement responsibilities placed on insurance agents and companies by SB47. Amendments are being developed by the Division of Insurance to attempt to address those concerns. The SDBA has also expressed concerns about the fact that the bill generally paints all self-funded MEWAs as inherently bad and thus illegal. Because of the possible presence of some other state banking association’s self-funded MEWAs as health insurance providers to SDBA member banks, I want to make sure to let members know that we are closely tracking this bill and will likely be expressing our concerns when it is heard next Tuesday, Jan. 30, in the Senate Commerce Committee.

SB77 and SB78 – As reported last week, these two bills were 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 and member’s interests in LPs and LLCs, respectively. Since these bills have no effect on a secured creditor’s interest, the SDBA has no position on either. Interestingly, the only vote against passage of both bills on the Senate floor was cast by Senator Frank Kloucek (D- Scotland). Curious.

SB82 – A host of bills have been introduced proposing to increase the level of numerous fines and fees collected by local government (cities and counties). SB82 proposes to double and triple the level of fees charged by SD sheriffs for services they perform. Included in SB82 is a provision which could effectively increase the amount of commission dollars collected by a sheriff via a sheriff’s foreclosure sale from a current maximum amount of \$450 on a sale with proceeds of \$15,000 up to

the amount of \$10,000 on a sale with proceeds up to a maximum amount of \$200,000. The work involved by a sheriff in a sale totaling \$15,000 is essentially the same as it is for a sale totaling \$200,000. Hence there is little plausible reason to pay the sheriff \$9,550 more for his effort. Generally speaking, no party involved in a sheriff’s sale gets made financially whole, so it makes little sense for the parties involved to simply give a bigger bite of the apple to the county’s general fund through the Sheriff’s Office. SDBA will oppose this provision of SB82 when it is heard on Monday, Jan. 29, in the Senate Local Government Committee.

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. Two provisions in revised Article I which have caught the attention of the banking industry in other states involve proposed revisions to language dealing with “good faith” and “choice of law.” The new definition of good faith included in revised Article 1 has already been adopted in previous revisions to articles 5 and 9 of the SD UCC, so we likely don’t have concerns with that language. However, the revised choice of law provisions have been universally opposed by the banking industry. We have expressed that concern to the sponsors of SB85 and are working with them to determine whether we will attempt to amend the bill in a fashion that will retain the current choice of law provisions or whether we will table SB85 and recommend that it be sent back to the Business Law Committee of the SD State Bar for further work during the 2007 interim. Even if the bill can be simply amended to reinstitute our current language on choice of laws, we would intend to delay the effective date of SB85 for one year to July 1, 2008. Delayed implementation would give businesses and lawyers a chance to widely review the new language of Article 1, identify any other issues, and have time to make any needed changes during the 2008 Legislative Session.

SB89 – A new proposal from the National Conference of Commissioners on Uniform State Laws (NCCUSL), this bill prescribes a set of uniform standards for the conduct of business by charitable foundations. The bill is widely supported by SD’s charitable foundations, particularly those associated with our public universities. The bill passed the Senate Judiciary Committee this week by a unanimous vote.

SB92 – This bill proposes to double the fee collected by a county Register of Deeds for transferring title to real property, moving it from 50 cents per \$500 of value to \$1.00. The SDBA is not planning to take a position on

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this bill, but banks real estate mortgage customers may notice the change should SB92 pass. Yesterday, the bill passed out of the Senate Commerce Committee by a vote of 4-2.

SB97 – This bill is the catch-all bill endorsed by the members of the Governor’s Trust Task Force. Changes to numerous sections of SD trust code are proposed including a proposal to give assets held in a self-directed IRA the same protections from claim as assets held in a qualified retirement plan (eg. 401K). This concept was endorsed by the SDBA Board of Directors in June of 2006.

SB98 – This bill also comes from the Trust Task Force. It proposes some changes to existing law governing a creditor’s rights to attach a beneficiary’s interest in various types of trusts.

SB99 – The last of three bills from the Trust Task Force, SB99 proposes the adoption of another product of the NCCUSL, the Uniform Principal and Income Act. This is a non-controversial set of uniform standards governing the definition and treatment of trust principal and income.

These three trust bills have been referred to the Senate Judiciary Committee, but have not yet been scheduled for their initial hearing.

SB110 – One of two bills introduced which propose to increase the state’s minimum wage (HB1191 is the other). SB110 proposes to raise the minimum wage to \$7.25 per year over a three-year time frame beginning July 1, 2007. In addition to the provisions contained in SB110, HB1191 adds an annual CPI adjustment beginning on July 1, 2010, and continuing each year thereafter. SB110 is slated for its initial hearing in the Senate State Affairs Committee on Monday, Jan. 29.

SB124 – This bill proposes to repeal right to work laws in South Dakota contingent upon the voters repeal of similar provisions in our state constitution.

SB125 – This bill proposes to allow an abandoned mobile or manufactured home to be moved by the owner of the property upon which such a home is located. Provisions to prior notify any lienholder of record are included in the bill.

SB165 – This bill is brought by a consortium of mortgage brokers. Among other things, the bill proposes to establish a new class or industry employee called a mortgage loan originator who would have to register with the Division of Banking. It also establishes higher license fees and bonding fees for mortgage lenders and

brokers. As is currently the case, banks would be exempt from the provisions of this act, just as they are from the current provisions of Chapter 54-14. The SDBA will closely monitor this legislation.

SB176 – This bill proposes to establish the SD small business equity infusion subfund within the preexisting state Revolving Economic Development Fund (REDI).

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.