



SDBA Legislative Update

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Legislative News

We are two days shy of the 2007 Legislative Session's halfway point, and 531 bills have been introduced. Since the bill introduction deadline came and went on Wednesday, the possibility for unpleasant surprises is significantly diminished. Now our attention turns largely to keeping close tabs on amendments to bills as they move forward. In the fairy tale world that is the legislative process, swans have been known to turn into ugly ducklings. Thus your lobbyists are ever vigilant. Here are some of this week's happenings.

New Bills

HB1231 – Introduced by Rep. Joni Cutler (R-Sioux Falls), this bill comes as a result of a recent decision by federal bankruptcy Judge Nail. I am told that attorneys representing the interests of both creditors and debtors have long agreed that wages which had been earned but not yet paid to persons filing for bankruptcy protection could be claimed as part of the \$10,000 of personal assets exempt from the bankruptcy process. Judge Nail recently issued a decision wherein he determined that accrued wages were not exempt under any circumstance. HB1231 proposes to sync South Dakota law with past interpretation. The bill awaits its initial hearing in the House Judiciary Committee.

HB1257 – A trust company organized under Chapter 51A-6A is currently required to have a minimum of five members on its board of directors. Private trust company interests are asking to have that minimum reduced to three members. The members of the House Commerce Committee approved the measure earlier today. It will be debated by the full House of Representatives next week.

HB1275 – The appraisal industry is asking to have a three-year statute of limitations put in place for real estate appraisers who are certified, licensed or registered pursuant to Chapter 36-21B. Under HB1275, legal action against an appraiser would have to be brought within three years of the occurrence of any alleged malpractice, error, mistake or omission. I will closely monitor the debate on this bill to get a feel for how a similar change might be viewed with regard to bank directors.

HB1285 – This bill attempts to put in place a statutory framework which would greatly restrict the sending of

unsolicited commercial electronic email advertisements. I am informed that a federal law known as the CAN SPAM Act already exists and, in fact, would likely preempt this proposed state law. The final section of HB1285 proposes that the recipient of an unsolicited commercial email advertisement, an email service provider or the State Attorney General could bring an action against the sender of such email to recover actual damages and/or civil damages of \$1,000 per email up to a maximum of \$1,000,000 per incident. Some have expressed concern that these civil damage provisions might encourage the filing of frivolous lawsuits against advertisers who are abiding by the terms of either this law or the federal CAN SPAM Act. Legitimate businesses will abide by whatever laws Congress or the state legislature may pass. Insidious, invisible spammers will continue to ignore them. Stay tuned for the debate.

HB1288 – A late arrival on the trust bill scene, this bill deals with trust decanting...movement of funds from one trust to another. Honestly, that is the extent of my knowledge about the impetus for HB1288.

SB202 – Under current law, up to \$250,000 of an individual's retirement assets are exempt from legal claims. SB202 proposes to increase that cap to \$400,000. As a direct result of the introduction of SB202, the Senate Judiciary Committee today removed Sections 7, 8 and 9 from SB97, the omnibus trust task force bill. Those sections were designed to exempt all retirement assets, whether held in an employer sponsored 401K plan or an independently administered IRA. I anticipate that SB202 may be amended to more closely mirror the intent of those portions of SB97 dealing with this subject.

Progress on Bills of Interest

Trust Bills – The three trust task force bills, SBs 97, 98 and 99, passed out of the Senate Commerce Committee earlier today with only one dissenting vote on SB97. Floor action will occur next week.

Payday Lending – Both payday lending bills had their initial hearing in the House Commerce Committee earlier today. Rep. Glenski's HB1137 was laid on the table in favor of Rep. Cutler's HB1172. The committee amended the bill by removing the three-day cooling off

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period language contained in Section 2. So now the bill simply clarifies the legislative intent with regard to the \$500 maximum lending limit for any individual borrower.

Initiative and Referendum Process

The House of Representatives sent a strong message that some change may be in order with regard to the process of gathering signatures to place proposed laws or constitutional changes in front of our state's voters.

HB1156 would prohibit those gathering signatures on petitions from being paid based on the number of signatures gathered. Those petition circulators could be paid on an hourly or salaried basis. The bill also proposes to change the law to require that petition circulators be South Dakota residents. This passed the House with only one dissenting vote. **HB1156** is one of 25 bills and 15 joint resolutions dealing with the general subject of elections. Of that group, at least six bills deal specifically with the initiative and referendum process. If anything good came from the debate over Amendment E, this legislative review of the petition circulating process is probably it.

Funding of K-12 Schools

This subject promises to take up a great deal of time on this year's legislative agenda as the legislative leadership in both political parties have staked out their positions with regard to increased funding for K-12 schools beyond what is required by current state law. This week, the Democratic plan, **SB117**, had its first hearing in the Senate State Affairs Committee. Next Monday, two bills sponsored by Republican Party leaders, **HB1139** and **HB1140**, will receive their initial hearing in House State Affairs. Beyond just the funding issue, the legislature will grapple with the significant issues such as school consolidation when they debate **SB69** and **HB1082**. Those bills were introduced early but have yet to be scheduled for their initial committee hearings. Hopefully, I will have some insights to share during our State Legislative Conference.

Funding for County Government

I am following the progress of two bills dealing with increasing user fees for the benefit of counties' general funds. **SB92** proposed a doubling of the fee charged by the Register of Deeds for real property transfers. Current law prescribes a fee of 50 cents for each \$500 of property value. Even after the fee was amended by the Senate down to 75 cents, the bill failed to pass, garnering only 12 votes in favor of passage. Bills to increase taxes or fees require a two-thirds majority vote for passage. **SB82** proposes sizable increases in many fees charged by county sheriffs for various types of civil processes. I testified as an opponent to one particular provision of **SB82** which would have greatly increased the current cap

on commission fees charged against the proceeds from sheriffs' foreclosure sales. Under current law, the sheriff can charge a commission of 3 percent on sales which yield between \$1,000 and \$15,000. Combining this maximum fee of \$450 with larger percentage commissions on the first \$1,000 yields a maximum cap of \$486. As introduced, the bill could have resulted in commission income of \$10,000 on a \$200,000 sale, an amount which had little if any sound basis in public policy. Negotiations are ongoing. I understand that the proponents of **SB82** have asked if the banking and collections industries would accept an increase in rates and sales values which would result in a maximum commission amount of \$750 on a sale of \$25,000. The SDBA Board of Directors will be asked to consider this next week.

Uniform Commercial Code

SB85 proposed the adoption of the latest revision of UCC Article 1, General Provisions. Because of concern over the NCCUSL adopted changes to the choice of laws provisions of Article 1, Sen. Dave Knudson (R-Sioux Falls) moved to defer this bill to the non-existent 41st legislative day for this session. The NCCUSL version will be studied this summer by the Business Law section of the SD State Bar. SDBA lawyers will be involved in that discussion.

I look forward to seeing many of you next Wednesday in Pierre at our State Legislative Conference, Reception and Dinner. It is always important to let your legislators know that you appreciate their willingness to do the people's business and that they know you are available if they have questions or concerns about our industry.

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.

See you next week!

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