

2018 South Dakota Legislature | **January 19, 2018**

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## Legislative News

By close of business Friday, 65 new bills were introduced this week, bringing the total to 211. Here are some highlights from week #2

### New Legislation

**SB84** is a bill aimed at assuring the public has access to a summary of any legal settlement agreement involving monetary damages, equitable relief or a violation of statute or rule where the settlement pertains to the state or any political subdivision (e.g. county, city, etc.). We are currently analyzing whether or not SB84 would inadvertently compromise the confidentiality of other types of government records held by an agency like the South Dakota Division of Banking.

**HB1078** proposes to give an unlimited shelf life to a freeze place on a credit bureau file by a consumer. Current South Dakota law limits the maximum duration of a credit bureau file freeze to seven years. Based on responses received from SDBA credit card committee members, the SDBA will not oppose HB1078.

**HB1082** proposes to exempt the following financial activities from the definition of “business of lending money”

- Any seller-financed transaction for the sale of assets to a purchaser.
- Any seller-financed transaction for the sale of real estate through a contract for deed.

Generally, any non-bank entity in the business of lending money is required to be licensed by the Division of Banking and to pay the South Dakota bank franchise tax. However, the long-held position of the Division of Banking is that neither seller-financed transactions or contracts for deed were subject to licensure, regulation or taxation. HB1082 would codify that position. It is my understanding that an amendment will likely be offered on HB1082 to explicitly exempt loans between family

members from licensing and regulation and resulting taxation.

During the 2017 Session, the SDBA opposed a bill that proposed a much broader exemption from South Dakota’s money lending laws and resulting taxation. That said, the SDBA has never taken the position that seller-financed sales, contracts for deed or loans between family members should be subject to licensing, regulation or taxation. Hence the SDBA will not oppose HB1082.

**HB1094** brought by State Rep. Hugh Bartels (R-Watertown), a former SDBA Board member, seeks to add the term “agricultural” to the types of other business-to-business lending activities that are not subject to some of the limitations placed on licensed money lenders by South Dakota’s voters in 2016. HB1094 also proposes a small change to make sure that loans to sole proprietors who operate their businesses under their federal taxpayer ID number instead of federal employer ID numbers also fit within the legal definition of a business for lending purposes.

### Update on Prior Bills

**SB5** proposed a new program to provide refunds of sales and use taxes or contractor’s excise taxes on certain workforce housing development projects. Upon hearing budget concerns surrounding a new tax refund program from the Governor’s budget office, Committee members voted 7-1 to defeat the bill, deferring it to the mythical 41<sup>st</sup> legislative day.

**SB62 – Data Breach Disclosure and Reporting:** The SDBA offered supportive testimony on the Attorney General’s data breach disclosure bill during Wednesday’s initial hearing in the Senate Judiciary Committee. Committee members approved an

amendment offered by Attorney General Jackley, addressing the lion's share of concerns about the original bill as expressed by retail, insurance, telecommunication and banking interests.

Sections 5 of the original bill in conjunction with language of a new section 8 pointing to Gramm-Leach-Bliley included in a pending amendment make it clear that banks can comply with this new state law as long as affected parties were notified within 60 days after the bank learns of a breach. As SB62 awaits a second hearing in committee next Tuesday, SDBA and other parties of interest continue to work on changes regarding some of the bill's penalty provisions and clearer language about what would trigger notification to consumers. All in all, I believe the bill that comes out of committee will be in a form the SDBA can continue to support.

**HB1028 and HB1072– Trust Task Force Bills:** Both of these bills were reviewed in the House Judiciary Committee on Wednesday and were sent to the House Floor with strong committee support. The full House of Representatives approved both measures on Thursday afternoon.

**HB1036 – Agricultural Mediation Program:** This South Dakota Department of Agriculture bill proposed the repeal of six sections of state law that currently describe operating provisions of the state's mandatory Ag Mediation Program. Despite the Department's assertion that program provisions currently contained in SDCL 54-13-11 through 54-13-17 are largely replicated in South Dakota Administrative Rule (ARSD 12:20:01), committee members voted 11-2 to kill HB1036. Legislators on that committee felt strongly that the statutes should remain in place.

As always, please feel free to contact me any time you have questions or concerns.

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