

2019 South Dakota Legislature | **January 11, 2019**

State of the State Address

South Dakota's 33rd Governor, Kristi Noem kicked off the session with her first State of the State Address on Tuesday afternoon. Stated priorities for her administration include closing the broadband gap in rural SD; pursuing a second-century pheasant hunting initiative that includes habitat, predator control and private funding elements; development of affordable housing initiatives including the building of multi-family units at the state prison in Springfield; addressing skill gaps in our workforce; a trade-not-aid focus for South Dakota agriculture; and several initiatives aimed at strengthening South Dakota families.

Gov. Noem referred to development of South Dakota's credit card banking industry that began in the early 1980s as a springboard to talk about identifying and pursuing the next big thing in South Dakota's economy. It will be interesting to watch as our newly-sworn Governor works with leaders of both parties in pursuit of her budget and policy priorities. Watching the non-stop posturing of political leaders from both parties in Washington, D.C., makes me more appreciative of the approach taken by South Dakota's elected leaders in our State Capitol.

Legislative News

As is always the case, the first batch of bills introduced in 2019 primarily consist of bills introduced on behalf of executive branch agencies, constitutional offices and interim legislative committees. Bills I will be following so far include:

SB37 Multiple Employer Health Insurance Trusts. This measure comes from the South Dakota Division of Insurance. Readers may remember from last year that the Credit Union Association of the Dakotas supported a bill allowing them to form a multi-state, multiple-employer health insurance trust for the benefit of credit

union employees in both states. The bill ultimately failed, but not because of a lack of support for the formation of new multiple employer health insurance trusts. SDBA's trust provides health coverage to about 2,400 employees and family members associated with 36 South Dakota banks. Industry groups in South Dakota known to be considering the formation of such trusts include dentists, chiropractors, optometrists, contractors, hospitality providers and of course, credit unions.

SDBA has an interest in SB37 because it:

- Exempts SD Bankers Benefit Trust from mandated membership in the South Dakota Life and Health Guarantee Association, saving members from assessments due to the implosion of Penn Treaty long-term care policies.
- Protects health plan participants from swings in the cost of health insurance coverage due to yearly rate shopping by the plan's employer members.

At this writing, members of the SDBBT Board of Trustees are still considering a formal position and recommendation to the SDBA Board of Directors regarding SB37.

HB1014 Bank Franchise Tax. This bill proposes to repeal the following provision of the bank franchise tax code: "All payments received must be credited first, to the penalty and interest accrued, and then to the tax due." Dating back to 1935, when our bank franchise tax was originally enacted, legislators determined, in the event of any tax, penalties and interest due, any payment made would first be applied to penalty and interest, and the rest would be applied to the principal balance of tax owed. That order of payment logic apparently runs counter to every other tax collected by the South Dakota Department of Revenue. Passage of HB1014 would put the bank franchise tax on the same footing as sales tax, contractor excise tax, alcohol beverage tax

and the like. I will be communicating with legislators that the SDBA is OK with this change.

HB1015 Cross References between State and Federal Tax Codes. This is the South Dakota Department of Revenue's annual bill to sync cross references between various parts of South Dakota's tax code, including the bank franchise tax, to the most current version of the Internal Revenue Code. Members of the House Tax Committee will hear HB1015 next Tuesday morning.

HB1032 and HB1032–SD Division of Banking Bills. **HB1032** proposes changes to the state's licensing process for money transmitters under SDCL Chapter 51A-17, especially as to how criminal background checks are conducted on applicants working for companies whose business is only conducted online. **HB1033** contemplates changes to laws governing the handling of pledges, preferred stock, and dividends by trust companies formed and operating under SDCL Chapter 51A-6A.

SB29 Unclaimed Property. Introduced at the request of State Treasurer Josh Haeder, this bill proposes to change some of the internal workings of the Treasurer's Unclaimed Property Program. None of the changes proposed in SB29 impact banks as holders and remitters of unclaimed property.

Other Legislation Awaiting Introduction

Several other bills of interest which I anticipate may be introduced include:

Business Development Banks. I have written extensively about the SDBA leadership's ongoing deliberation about legislation that would enable the formation and operation of limited purpose, specialty business development banks in South Dakota. In December, the members of the SDBA's Legislative Committee and Board of Directors voted unanimously to oppose such legislation.

Commercial Property Assessed Clean Energy Programs.

Last year, the SDBA successfully led the opposition to the establishment of local C-PACE programs in South Dakota based on problems experienced elsewhere in the U.S., primarily with poorly-structured, poorly-underwritten loans and high-pressure sales tactics employed by salesmen of energy efficiency

improvement programs for residential properties. Late in 2018, SDBA reviewed a revised legislative proposal developed by C-PACE program supporters. The revised proposal was less problematic than the 2018 version but was still not ready for prime time. We will analyze a final bill when it becomes available and will work with banker leadership to determine SDBA's official position.

Confessions of Judgment. A very old legal tool used in collection of money due creditors from their borrowers, Confessions of Judgment have been misused by some non-bank lenders and their collectors in matters involving small business loans in other states. Thankfully, we are not aware of any such abuse in South Dakota. That said, SDBA is considering whether or not to introduce legislation to prevent improper use of this tool in South Dakota. We are currently working on language suitable for introduction in bill form.

That's it for week one. Once again, it is my pleasure to represent the interests of South Dakota's banking industry before the State Legislature this year. Please feel free to contact me any time you have questions or concerns.

- Office Phone: 605.224.1653
- Cell Phone: 605.280.7985
- Email: ceverson@sdba.com