



# SDBA Legislative Update

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## Legislative News

The deadline to introduce bills has come and gone, and the total stands at 388. While the bill count in the first session after any election year is generally lower, this may be a record low total. Perhaps that is reflective of just how cold this winter has been in the Capital City. Here are some bills that I added to my tracking list this week.

**SB150** would establish a paid parental leave entitlement of one week for each year that any full time employee who has been with his/her employer, up to a maximum of four weeks. The entitlement would only apply to private employers with 50 or more employees. This bill is brought forward by Sen. Reynold Nesiba (D-Sioux Falls) who also is the prime sponsor of the mandatory minimum sick leave bill, SB96.

**SB166** is aimed at carving out an exception to the newly-established 36 percent rate cap on loans made by money lenders licensed under SDCL Chapter 54-4. The exception would not cover payday loans/lenders, but instead would exempt business-to-business loans in amounts not less than \$5,000. As explained to me, the lending activity to be covered by this exemption would essentially be sub-prime, business startup loans that banks don't make in the ordinary course of business. As I understand it, this bill is brought at the request of a company that employs about 40 people in South Dakota and that most of the loans are made to out-of-state entities.

**H1166** proposes modifications to the state's open government records laws. Under this bill, the terms of any settlement of any civil or criminal proceedings between the state or its political subdivisions and any other party could not be made confidential without a court order. My understanding is that this new requirement would apply to such matters as settlements of disputed tax claims between businesses and the Department of Revenue which are generally confidential by mutual agreement of both parties, meaning those parties would have to go to court to maintain that confidentiality.

**HB1179** proposes an exemption from South Dakota's mortgage lending license requirements for any company that originates, sells or services less than six nonresidential mortgage loans in a 12-month period. The bill also proposes a similar exemption from mortgage loan originator licensing for any individual who offers or negotiates terms of five or fewer nonresidential mortgage loans in a 12-month period. The prime sponsor of HB1179 is Rep. David Lust (R-Rapid City) who is doing so on behalf of a party or parties in his district that occasionally make loans in support of non-residential real estate transactions. Such an exemption from licensing carries with it a corresponding exemption from liability for payment of South Dakota's bank franchise tax. All licensed money and mortgage lenders are currently subject to the tax.

## Action on Prior Bills

**SB86** - The bill to allow the funds of any individual county to be deposited in any bank located in South Dakota gained passage in the full Senate yesterday on a vote of 33-1. Current law holds that as long as there are two or more banks operating within a given county, funds in the county treasury must be kept on deposit in a bank or banks within that county. During its initial hearing in the Senate Local Government Committee on Wednesday, I suggested that local deposits, including county government funds, are important to business model of any bank, especially smaller community banks operating in rural areas. I also suggested that there is no government funds more locally raised than county funds, the vast majority of which comes from real property taxes and motor vehicle license fees. I also reminded those senators that the general fund of county governments across the state receive about 21 percent of the local government share of the bank franchise tax. But at the end of the day, I couldn't overcome the fundamental contention that county governments should have the same deposit-shopping flexibility as do cities and school districts.

As is the case with all of the afore mentioned bills, I will be discussing the prospects for SB86 with members of the SDBA's Legislative Committee and Board of Directors next week during our State Legislative Day.

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**HB1065**, a curious bill proposing the repeal of a very old section of South Dakota law dealing with the registration of fictitious business names, was heard on Wednesday by the members of the House Judiciary Committee. Brought forward by Rep. David Johnson (R-Rapid City) at the suggestion of fellow Rapid City legislator David Lust, the current statute proposed for repeal states:

“All persons interested in a business described in § 37-11-1 at any time shall be at all times liable for any contracts or obligations incurred while they were so interested and in addition shall be liable for all contracts and obligations incurred prior to the filing of a verified statement showing that they are no longer interested.”

SDBA Counsel Brett Koenecke testified in opposition to HB1065 as did lawyer/lobbyist for the SD Trial Lawyers Association, Roger Tellinghuisen. Reps. Johnson and Lust testified that this old statute is unneeded as the underlying legal issues of debts of the business vs debts of the business owners are dealt with in well-established common law. As measured by their votes against passage of HB1065, every lawyer on the committee with the exception of Rep. Lust agreed with the opponent concerns. The bill was ultimately passed down to the full House of Representatives by a vote of 7-5. No action has been taken on HB1065 in the House of Representatives as I understand discussions on both sides of this issue are ongoing.

**HB1096** is another interesting bill brought by Rep. Lust on behalf of a buy-here/pay-here used car dealer in Rapid City. The bill proposes to make it a crime of theft for any person to intentionally prevent the enforcement of a secured creditor's security interest in a person's motor vehicle by failing to return the vehicle to the secured creditor following notice of default or by prohibiting the creditor from taking possession of the vehicle. HB1096 is patterned after current laws in Arizona. After some good debate and some amending in House Judiciary Committee on Friday morning, the bill was sent on to the House of Representatives on a 10-2 vote.

**HB1102**, brought by Rep. Steven Haugaard (R-Sioux Falls), proposes to allow funeral home directors to collect reasonable expenses incurred in providing funeral services by presenting an affidavit to someone holding an asset of the decedent. In our case, a funeral director would be able to present an affidavit to a bank

teller or other bank officer, demanding payment directly from the decedent's account without notice to any legal successor. During its first hearing on Friday morning in the House Judiciary Committee, Brett Koenecke offered sound, well-reasoned testimony in opposition to HB1102 on the SDBA's behalf. By a vote of 10-1, committee members voted to kill the bill by deferring it to the non-existent 41<sup>st</sup> legislative day.

That's it for this week. As always, please feel free to contact me any time you have questions or concerns.

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