

2023 South Dakota Legislature | February 24, 2023

Week Seven: 98th Legislative Session

Week seven proved to be a busy week for the SDBA as we continue to monitor bills relevant to the banking industry in South Dakota.

Monday, February 27, marks the 30th legislative day of the 98th South Dakota legislative session, with only 8 legislative days remaining, and the 38th day reserved for consideration of gubernatorial vetoes.

SDBA Bill Watch

HB 1117 and HB 1118: *Make an appropriation to support the small and mid-sized manufacturers, and to declare an emergency; and make an appropriation to support the South Dakota Small Business Development Center and the South Dakota Procurement Technical Assistance Center, and to declare an emergency.* These companion bills were created to receive support in favor of the special appropriated funding proposal by the Governor. The passage of these measures would allocate \$2.3 million in general funds to support the Small Business Development Center (SBDC), the Manufacturing and Technology Solutions and the Procurement and Technical Assistance Center. At the request of House Speaker Bartels, and authorization of the SDBA Board, we will "support" these companion bills, and have testified in favor during several bill hearings. Both bills passed out of Committee on Joint Appropriations and now will be considered for further funding consideration.

HB 1108: *An act to Revise Provisions Related to Abandoned Mobile or Manufactured Homes.* This revised bill contemplates the possible "disposal and/or sale of abandoned mobile or manufactured homes." We are tracking since a bank may have a lien on the home and want to ensure that lienholders remain noticed as part of the process when seeking remedies, the bill suggests. After discussing with the bill sponsor, lienholder notices remain in place as part of the notice requirement. This bill passed out of House Local Government with a 10-0 affirmative vote and subsequently passed on the House floor with a 70-0 Do Pass recommendation. The Senate committee on Commerce and Energy passed this measure unanimously and has been placed on the consent calendar. Debate of this measure will follow before the SD Senate.

SB 41: *establish a program for housing infrastructure loans and grants and make an appropriation.* This bill is a refinement of the Housing Opportunity Fund, a bill that required tweaking after the 2022 legislative session. In 2021, a housing task force was established to develop an infrastructure program for career housing in South Dakota. A \$200 million SD Housing Infrastructure Fund was created and is to be administered by the SD Housing Development Authority. The SDBA testified in favor of this bill, Thursday, January 12, with a due pass recommendation and it passed out of committee with an 8-1 affirmative vote. This legislation has been signed by the Speaker of the House and the President Pro Tempore of the Senate. February 1st, Governor Noem signed this bill into law. **Thank you to all SDBA members for your engagement with our Call to Action on this legislation.**

SB 49: *An act to prohibit the improper storage and disposal of records containing personal or protected information and provide a penalty.* In its current form, SB 49 aims to penalize individuals, government agencies and small businesses (banks, etc.) for what may be perceived as "improper storage and disposal of records," and if charged with a violation would have significant money penalties and possible misdemeanor and felony charges. The SDBA "opposes" this legislation in its present form. With a strong coalition of opposition led by the SDBA, a day before the scheduled hearing on January 19, the Attorney General's office requested this bill to be removed from the committee's agenda. The SDBA participated in a meeting with the AG's office on January 31st to further express our dislike for this measure. The AG's office has agreed to pull this bill and will work with the SDBA and other industry folks post legislative session to determine if there is a way for all parties to be in agreement on a future bill.

SB 109: *An Act to Require Employers to Disclose Compensation or Range of Compensation to Applicants and Employees.* This bill would require employers with more than 100 or more employees to disclose in each job posting the hourly or salary compensation in addition to a description of all benefits and other compensation to be offered to the hired, promoted, or transferred applicant or employee. The bill goes on to require the employer shall keep, maintain records to demonstrate compliance of the Act during the employee's or applicant's employment. Additionally, any person can file with the SD Department of Labor and Regulation (SD DOLR) a detailed account of an

alleged violation, further requiring the SD DOLR to investigate and subject the employer to civil money penalties of five-hundred dollars for each violation. **The SDBA testified in opposition to this legislation before the Senate Commerce and Energy Committee on January 31st and was successful in sending it to the 41 legislative day, killing this bill.**

HB 1193: An Act to amend provisions of the Uniform Commercial Code (UCC). The SDBA is bringing this bill and is sponsored by Representative Mike Stevens (R) Yankton in the House and Senator David Wheeler (R) Huron, in the Senate. The 2022 amendments to the Uniform Commercial Code ("UCC") address a limited set of transactions largely involving emerging technologies, such as virtual (non-fiat) currencies, distributed ledger technologies, and, to a limited extent, artificial intelligence. The amendments span most of the Articles of the UCC and add a new Article addressing, in part, certain digital assets. This bill was sent to the House Judiciary Committee where it passed out of committee with a 7-4 Committee vote and passed out of the House with a vote of 49-17. Since the House vote, the SD Freedom Caucus issued a press release claiming that this bill allows government to control people's purchasing. An email campaign has ensued by supporters of this unfounded and profoundly false claim. SDBA will refute this misguided assertion and urge the members of the Senate Commerce and Energy Committee to pass HB 1193. This measure will be before the Senate Commerce & Energy Committee, Tuesday, February 28. **Watch for a Call to Action on this measure!**

SB 185: An Act to establish the Committee on Foreign Investment in the United States – South Dakota and revise provisions related to the foreign ownership or control of agricultural land. While we tend to agree with the concept of this proposal, the SDBA is highly concerned that this bill may directly or indirectly interfere with banking, agricultural mortgages, leases, and contracts. Additionally, there is a lookback provision that permits land that has already been acquired or mortgaged to be terminated and forfeiture of real property interests to the state and appears to presume no court process. This bill passed out of committee and was debated on the Senate floor Tuesday, February 21st. **After lengthy floor debate, this measure was defeated with a vote of 11 yeas/23 nay votes.**

SB 189: An Act to prohibit state agencies from contracting with companies owned or controlled by certain foreign entities or governments. SB 189 is a companion bill to SB 185, with similar intent, "not to do business with certain foreign entities or governments". Again, while we are aligned with the intent of the measure, we find definitional problems with this bill making banking riskier with no upside for our industry. Amendment 189C was introduced which provided greater definitional clarity, therefore the SDBA

changed its opposition to a neutral position on this bill. This bill moves to the House State Affairs Committee where further action on this measure will take place this week.

HB 1208: An Act to prevent government entities from entering contracts with companies that promote certain economic boycotts. This Environmental Social and Governance (ESG) bill focuses on penalizing "all entities" from doing business with state or local governments if it is perceived they "boycott" businesses such as agriculture, timber, mining, fossil fuel, guns and ammunition industries in addition to abortion and gender change facilitation. The SDBA led opposition to this misguided measure with support from several likeminded industry lobbying groups. **We were pleased to defeat this measure before the House State Affairs Committee on Friday, February 3rd with an affirmative vote of 12-1, sending this measure to the 41st legislative day.**

HB 1207: An Act to prevent financial services (banks, public trust companies, money transmitters, or insurance) providers from denying service based on certain grounds. This misguided and obtuse ESG measure stipulates that banks may not deny services when the effect of the denial is to prevent, limit or disadvantage the person from entering or competing in a market or business segment that benefits another person or business activity in which the financial institution has a financial interest, or deny services in coordination with another person or financial institution. Furthermore, this measure would impose required disclosures to the State Divisions of Banking and Insurance if they utilize standards based on non-financial, non-traditional, or subjective measures, including environmental, social and governance (ESG) criteria or diversity, equity, or inclusion (DE&I) or any other political, social or ideological factor. This bill was sent to the House Commerce and Energy Committee with its hearing scheduled for Wednesday, February 15. **The SDBA led the opposition to this measure. This bill was sent to the 41st day, defeating this measure with a 10-3 vote before the House Commerce and Energy Committee.**

SB 208: An Act require financial institutions to report exploitation of an elder or an adult with a disability to the office of the Attorney General. This bill would require that any possible identified financial exploitation of an elder or adult disabled person be reported to the Office of the Attorney General in the form of a suspicious activity report (SAR). The SDBA is working with the bill sponsor, Senator David Wheeler (R) Huron to inform him that the notification process for these nefarious acts is currently being done. While the SAR reporting is required to go to the U.S. Department of Treasury, Financial Crimes Enforcement Network (FinCEN) local law enforcement agencies along with the AG's office also maintains access to these records.

Bill sponsor, Senator Wheeler moved to "table" this bill, and that motion passed 5-0, killing this measure.

This summary concludes week seven of the 98th Legislative Session in Pierre.

Please watch for "Call to Action" emails this week in support of HB 1193, An Act to amend provisions of the Uniform Commercial Code (UCC).

We hope to see you at the SDBA/NDBA Annual Convention in Sioux Falls, June 4-6. Registration details will be coming out later in March. Have a great week.

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