

January 26, 2018

## **SB 87 – Revise certain provisions regarding the lawful possession of firearms in certain locations.**

*May be one of the most intrusive mandates for business in the state's history*

Senator Jeff Monroe (R-Pierre) claims to be attempting to make areas marked as a “firearms-free zone” or even with a posted notice that firearms cannot be brought into a building, must take action to be truly free of firearms by requiring those areas to be protected by metal detectors or trained personnel at the entrance.

With rhetoric claiming that society has a problem with people posting signs and thinking they have solved problems, when the signs alone don't guarantee the problem has really been dealt with or solved, Senator Monroe has advanced SB 87 which says:

*Section 1. That chapter 22-14 be amended by adding a NEW SECTION to read:*

*No building, structure, park, campus, or other area may be posted as a firearm-free zone unless any person entering the area is required to pass through an electronic device to detect the presence of a firearm on the body of that person or unless personnel trained by the entity or a delegate of the entity posting the area are located in the area. The provisions of this section do not apply to:*

- (1) Any county courthouse;*
- (2) The state capitol; or*
- (3) Any law enforcement office or building."*

The discussion among the Senators who supported the bill on the committee (see vote below) focused on a tenuous assumption that posting a sign saying firearms are not allowed in a facility is the same as an implied guarantee that the area is “firearms free”. And, the bill purports to make that claim valid by requiring the use of screening devices or trained personnel at each entrance. This might be effective if you work in a cave with only one entrance or better yet up in a tree so you can search people while they climb to work.

To argue that posting a policy that firearms are not allowed in a facility is the same as guaranteeing the public that the area is absolutely gun free is just plain weird. It is making people aware of a policy . . . a policy that could be violated to be sure and if it is violated, the business would react to regain compliance.

If a business posts a sign saying the area doesn't allow smoking (aka, smoke free), that doesn't guarantee no one will light up a monstrous stogie; it will assuredly mean that by the time they take the first good puff, they will be kicked out or doused with a bucket of water.

In like manner, posting a sign saying a business doesn't allow firearms in the facility doesn't in any manner offer a guarantee that someone didn't break that policy by sneaking a gun into the shop. Further, if (God forbid) the person who snuck the gun in starts shooting people – an act that violates a number of laws that are not implied but actual – it will be dealt with by security (if available) and law enforcement.

Senator Monroe has not provided definitions for his key terms so it is impossible to know what constitutes “posting” a message regarding firearms. Does this bill only apply to when there are signs visible in the area where firearms are banned? Many businesses have a policy prohibiting firearms in the workplace but that policy is only spelled out in the policy manual, without any signs in the facility. In fact, manufacturers that have federal contracts are often required to adopt that very policy.

SB 87 is an overly harsh mandate for a business with one entrance. The Chamber has manufacturing members that have buildings the size of one or more football fields that have five or more overhead doors that can be 20 feet high and 50 feet wide. You’d need an entire SEAL team to cover that much territory.

There is the possibility that the courts may issue a ruling in the future that says that posting a sign prohibiting firearms creates an implied guarantee that the area is “firearm free”. The South Dakota Chamber of Commerce and Industry would politely suggest it is preferable for the South Dakota Legislature to not be in any hurry to beat the courts in making that mistake.

SB 87 was approved by the Senate Judiciary Committee on a vote of 4 to 2 with one excused. Here is that vote:

### **SB 87, Senate Judiciary, Do Pass Amended - 2018**

Yeas **4** Nays **2** Excused **1** Absent **0**

Greenfield (Brock)	Yea	Kennedy	Nay	Langer -yes
Nelson	Yea	Netherton	Excused	Rusch - Nay
Russell	Yea			

**Time for Action: If you see your Senator this Weekend – at a cracker-barrel/legislative coffee, shopping or actively running away from you – tell them that SB 87 is a step beyond reasonable and to vote NO next week.**

### **SB 145 - Keep Workers Comp Working**

The last edition of Capitol-ism reported on a growing trend in workers compensation of lawyers making claims of bad-faith against employers and insurance companies.

A bill has been introduced - SB 145 - sponsored by Senator Maher (R- Isabel) and Representative Kent Peterson (R-Salem).

The bill provides an answer to this trend by having South Dakota join 37 other states in using an agency to determine if there has been any bad faith when and if claims are denied. Here is the key language to this bill:

*Section 1. That chapter 58-20 be amended by adding a NEW SECTION to read:*

*The Legislature finds that the Department of Labor and Regulation is designated to be the exclusive fact-finder for any issue related to administration of Title 62 pursuant to §§ 62-2-5, 62-7-12.1, and 62-7-13, and the exclusive fact-finder to assess any attorney's fees for vexatious or unreasonable refusal to pay loss under § 58-12-3.*

The bill goes on for a total of five sections with legalese about attorney fees and other technical jargon. It has been assigned to Senate Commerce and Energy Committee. A hearing date has not been set. Here is the roster of that committee:

Senators:

**Jensen, Phil (R)** – Rapid City

**Kennedy, Craig (D)** - Yankton

**Kolbeck, Jack (R)** – Sioux Falls

**Nelson, Stace (R)** - Fulton

**Netherton, Jenna (R)** Sioux Falls

**Novstrup, Al (R)** Aberdeen

**Tapio, Neal (R)** – Watertown

## **HB 1051 – Revise certain provisions regarding suspension or debarment of a business by the Bureau of Administration.**

The Department of Administration is trying to make a law that allows state government to prohibit some businesses from seeking to conduct business with the state. Current law simply says they can “suspend or bar” business “for cause”, without providing any details what that term means.

The bill was opposed by the Contractors Association and the South Dakota Chamber of Commerce over concerns that the new language was too vague and might allow rather capricious suspensions. The House Government Operations and Audit Committee, thinking the language in the bill was better than the complete lack of direction contained in the current law, sent the bill to the full House of Representatives on a vote of 5-to-0. Wednesday, HB 1051 passed the House on a vote of 55 – 10. So much for influence it would seem.

To be fair to both the Department of Administration and the House Committee on Government Operations and Audit, the objections voiced by the Contractors and the Chamber were offered at the last minute without any suggestions for improvement. But the concerns remain.

HB 1051 seeks to add the following language to law:

*Suspension or debarment may be imposed for:*

*(1) The criminal conviction of or civil judgment against a business or principal, officer, director, or manager of the business involving fraud or dishonesty;*

*(2) Willful failure or a history of failure to perform in accordance with the terms of one or more government contracts or transactions;*

*(3) Failure to comply with laws or regulations;*

- (4) Debarment, suspension, or other comparable action by the federal government or another state;*
- (5) Failure to make delivery or complete the project within the time specified in the contract or purchase order, or delivery of items that do not comply with the specifications of a government contract or purchase order;*
- (6) History of offensive behavior in dealing with state employees; or*
- (7) Any other cause of a serious or compelling nature that creates substantial doubt as to whether the business may be relied upon to fulfill the business's obligations under any contract awarded to the business. The bureau may promulgate rules, pursuant to chapter 1-26, to establish the procedures and parameters for suspension and debarment of a business.*

The most worrisome language is in sections 2 and 3 above. Before the bill advances to the Senate, the Department of Administration has agreed to review that language with the Contractors and the Chamber. They clearly have the momentum but as with virtually all public staff people, they are wanting the law to be fair and workable.

As the great Green Bay Packers Coach Vince Lombardi said "I've never been beaten, but I have run out of time on occasion." Next week will tell if we have run out of time or not.

### **SB 136 - An Act to authorize other languages to be used in the process of issuing certain driver licenses and permits.**

***As the they say over at the South Dakota Truckers Association,  
"If you bought it . . . a truck brought it"***

Those long and large 18 wheel trucks are essential to the economy and to our quality of life. They are large, sometimes annoying, they go everywhere and they still need drivers (at least for the foreseeable future). Question: Where are all those drivers going to come from? SB 136 is sponsored by Senator Nesiba (D-Sioux Falls) and offers one possible solution to that question. SB 136 will make it optional but possible for the driver's license and application to be taken in a language other than English.

The key is that giving the test in a language other than English is optional, voluntary, elective, discretionary, unforced, uncoerced, non-compulsory, free-willed, not required – in other words, up to the folks in charge.

Here is the critical section of this bill:

***Section 2. That chapter 1-27 be amended by adding a NEW SECTION to read:***

***Nothing in this chapter prevents the Department of Public Safety from offering any driver license and permit application and examination material or conducting any examination in a language other than English. This Act does not require the department to offer any driver license and permit application and examination material or conduct any examination in a language other than English.***

**The South Dakota Chamber of Commerce and Industry supports SB 136. If Senator Nesiba keeps thinking like this, he is really going places (*groan*).**

***Thank you for your support of the South Dakota Chamber of Commerce & Industry! Join us for Business Day at the Legislature Thursday, February 22.***